JOURNAL

of the

HOUSE OF REPRESENTATIVES

of the

General Assembly

of the

Commonwealth of Kentucky

1996 First Extraordinary Session

Held in the State Capitol in the City of Frankfort,
at Frankfort, in the Year of Our Lord 1996,
and in the Two Hundred and Fifth
Year of the Commonwealth

Begun on Monday, the Second Day of December, 1996, and Adjourned
Sine Die on Thursday, December 12, 1996

Paid for from state funds

FOREWORD

The Kentucky Constitution requires each house of the General Assembly to keep a journal as a public accounting of daily legislative activity. It is the official record of action by the General Assembly.

The *Kentucky Revised Statutes* require the Legislative Research Commission to compare, edit, correct, and publish the journals of each chamber. This is the *House Journal* for the First Extraordinary Session of 1996.

The texts of simple and concurrent resolutions appear on first reading or adoption. Appendices contain a list of elected representatives, tables of actions on bills and resolutions, roll call votes, and a subject index.

Ms. Jean Wallace and Ms. Wilda Bond prepared the *House Journal* for the 1996 First Extraordianry Session. The edited copy and appendices in this volume reflect the cooperative efforts of the LRC Staff.

DON CETRULO
Director

The Capitol
Frankfort, Kentucky
1997

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JOURNAL
OF THE
HOUSE OF REPRESENTATIVES
OF THE
GENERAL ASSEMBLY
OF THE
COMMONWEALTH OF KENTUCKY
FIRST EXTRAORDINARY SESSION
OF 1996

MONDAY, DECEMBER 2, 1996

FIRST LEGISLATIVE DAY

At an Extraordinary Session of the General Assembly of the Commonwealth of Kentucky, held at the Capitol in the City of Frankfort, and begun on December 2, 1996, the two hundredth and fifth year of the Commonwealth, in compliance with a Proclamation issued by the Governor of the Commonwealth of Kentucky, the Honorable Paul E. Patton, the House of Representatives was called to order by the Honorable Jody Richards, Speaker of the House of Representatives.

Invocation by Reverend Jana Hall, Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The Clerk read the following Governor's Proclamation.

Proclamation by Paul E. Patton, Governor of the Commonwealth of Kentucky:

To All To Whom These Presents Shall Come: Pursuant to the power vested in me by Section 80 of the Constitution of the Commonwealth of Kentucky, I, Paul E. Patton, Governor of the Commonwealth of Kentucky, do issue this proclamation, convening the General Assembly of Kentucky in Extraordinary Session at the Seat of Government, Frankfort, Kentucky, at 12 noon, Monday, December 2, 1996, for the sole purpose of considering the following subjects:

(1) Preserving, reforming, and making more competitive the Commonwealth's workers' compensation system by amending or creating new sections of those Chapters of the Kentucky Revised Statutes pertaining to the Commonwealth's workers' compensation system, and amending or creating a new section of Kentucky Revised Statutes Chapter 48 to require appropriations to the Workers' Compensation Funding Commission.

(2) Adjust current appropriations under the 1996 Kentucky Acts Chapter 380, Part 1, Section 1., Items 59.a., 59.b., 59.c., and Chapter 382, to provide for additional support to the Labor Cabinet, Departments of Workplace Standards and Workers' Claims and the Worker's Compensation Funding Commission.

(3) Amend Kentucky Revised Statutes Chapter 143 to provide for the payment of existing Special Fund liability by re-directing coal severance tax revenue collections in the amount of $9.5 million in fiscal year 1996-97 and by re-directing $19 million from the same source in fiscal year 1997-98; and

(4) Ensure that prospective awards for coal workers' pneumoconiosis are funded by modifying the coal industry assessment.

(5) Repealing various provisions of the Kentucky Revised Statutes as necessary to implement the provisions of this proclamation.

(6) Declaring an emergency thereby making any legislation enacted pursuant to this proclamation effective upon the signature of the Governor.

DONE AT THE CAPITOL, in the City of Frankfort, this the 2nd day of December in the year of our Lord One Thousand Nine Hundred and Ninety-Six and in the year of the Commonwealth the Two Hundred and Fifth.

Paul E. Patton, Governor

John Y. Brown III, Secretary of State

Resignations were filed from Representative Scorsone, District 75, Representative Farrow, District 62, Representative Stengel, District 29, and Representative Sanders, District 19.

The Speaker announced that the membership is the same as it was in the Regular Session of 1996 with the exceptions of additions in the 62nd District, 100th District and the 19th District and vacancies existing in the 29th District and the 75th District. The Clerk read the Certificates of Election of the newly elected members from the Secretary of State.

Representatives House, Vincent and Mello produced certificates of election and were duly sworn.

The roll was called. All members present except Representatives Fox, Friend, Northup, and Treesh.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Introduction of Bills and Resolutions

HB 1, by Representatives Rapier, Richards, L. Clark and Callahan: AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

HB 2, by Representatives Stumbo, L. Clark, Callahan and Richards: AN ACT making an appropriation to the Legislative Research Commission for expenses incurred in connection with the first Extraordinary Session of 1996 of the General Assembly, and declaring an emergency.

HR 1, by Representatives Stumbo, L. Clark, Callahan and Richards: A RESOLUTION adopting House of Representatives rules of procedure for the 1996 Extraordinary Session of the General Assembly.

HR 2, by Representatives Stumbo, L. Clark, Callahan and Richards: A RESOLUTION extending an invitation to the pastors of Frankfort churches to open sessions of the 1996 Extraordinary Session with prayer.

HR 3, by Representatives Stumbo, L. Clark, Callahan and Richards: A RESOLUTION directing appointment of a committee to wait upon the Governor.

Representative Stumbo moved to suspend the rules to act upon Resolutions. Agreed.

Representative Stumbo moved the adoption of the following **HR 1**:

HR 1, A RESOLUTION adopting House of Representatives rules of procedure for the 1996 Extraordinary Session of the General Assembly.

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. That, except as provided in Sections 2 and 3 of this Resolution, the Rules governing the House of Representatives immediately prior to sine die adjournment of the 1996 Regular Session of the House of Representatives be adopted as the Rules governing the 1996 Extraordinary Session of the House of Representatives.

Section 2. That House Rule 49 is amended to read as follows:

Rule 49. Procedure in Committee. The rules of procedure in the House shall be observed in committee insofar as the same are applicable. The committee chairman, or the committee by majority vote in a regularly called meeting, shall post at least ***one***~~[three]~~ calendar ***day***~~[days]~~ prior to their consideration the bills and resolutions to be considered by the committee at its next meeting ***and***~~[provided that no bill or resolution shall be posted by the chairman or the committee by a majority vote unless and until a request for posting form has been filed with the committee chairman or secretary and approved as containing satisfactory information by the committee chairman.]~~ no measure shall be considered except those posted, unless the measure is one which has been recommited to the same committee from which it was previously reported with a favorable expression. A list of the measures to be considered shall be filed with the Clerk at least ***one***~~[three]~~ calendar ***day***~~[days]~~ prior to the meeting. ~~[In the case of prefiled bills receiving a favorable expression from the interim joint committee to which they were assigned, posting by the chairman or the committee shall occur during the first week of the session, and such bills shall be considered by the appropriate committee during the first three weeks of the session. No posting request shall be required for such prefiled bills. This rule does not apply to bills with a fiscal impact of more than $20,000.]~~

Section 3. That House Rule 51 is amended to read as follows:

Rule 51. Introduction of Bills. Bills and resolutions may be introduced by filing them with the Bill Introduction Clerk in her office at any time the same is open. Bills and resolutions introduced by filing them with the Bill Introduction Clerk after the House has concluded Item 5~~[4]~~, in Rule 4, Order of Business, shall be considered as having been introduced the next succeeding legislative day. The Bill Introduction Clerk shall number bills in the order received and transmit a copy immediately after introduction on the House floor to the Committee on Committees for reference to committee.~~[No bill or resolution having the force of law shall be introduced after the thirty-eighth legislative day of the session. The last two legislative days preceding the veto recess shall be reserved by the House exclusively for the business of concurring in amended House bills.]~~

There being no objection **HR 1** was adopted.

Representative Stumbo moved the adoption of the following **HR 2**:

HR 2, A RESOLUTION extending an invitation to the pastors of Frankfort churches to open sessions of the 1996 Extraordinary Session with prayer.

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

That the Sergeant-at-Arms be directed to invite the pastors of the various churches of Frankfort to attend the meetings of the House of Representatives and open daily sessions of the 1996 Extraordinary Session with prayer.

There being no objection **HR 2** was adopted.

Representative Stumbo moved the adoption of the following **HR 3**:

HR 3, A RESOLUTION directing appointment of a committee to wait upon the Governor.

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

That the Speaker appoint a committee of this House to join a like committee from the Senate to wait upon the Governor and inform him that the 1996 Extraordinary Session of the General Assembly is prepared to receive any message he may care to deliver.

There being no objection **HR 3** was adopted.

Pursuant to **HR 3,** the Speaker appointed the following Committee to wait upon the Governor: Representatives Geveden, Marzian, Adams, Siler and Collins.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Committees meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

The Committee on Committees announced the following committee appointments:

Representative House - Agriculture and Small Business; Banking and Insurance; Counties and Special Districts

Representative Vincent - Economic Development; Tourism Development and Energy; Transportation

Representative Mello - Transportation; Agriculture and Small Business; Counties and Special Districts

Reference of Bills

The Clerk reported that the Committee on Committees has referred the following Bills:

Appropriations and Revenue: **HB 2**

Labor and Industry: **HB 1**

Representative Stumbo moved that the rules be suspended to allow the Committee on Labor and Industry to meet upon recess in the Speaker's Office to consider **HB 1** so that it may be given first reading. Agreed.

Recess

Representative Stumbo moved that the House recess for ten minutes to allow the Committee on Labor and Industry to meet to consider **HB 1**. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report of Committees

The Committee on Labor and Industry reported **HB 1** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 1, AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related ***traumatic event or series of traumatic events, including cumulative trauma***[~~harmful change in the human organism~~], arising out of and in the course of employment ***which is the substantial causative factor producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process and***[~~, including damage to or loss of a prosthetic appliance, but~~] does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease ***and damage to a prosthetic appliance***, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this section shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the ***substantial causative factor***[~~proximate cause~~]. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure" as used in KRS 342.316 shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.

(5) "Death" means death resulting from an injury or occupational disease.

(6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.

(7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.

(8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

(9) "Commissioner" means the commissioner of the Department of Workers' Claims.

(10) "Board" means the Workers' Compensation Board.

(11) ***(a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from the effects of an injury or has not reached a level of improvement that would permit a return to employment;***

(b) "Temporary partial disability" means the condition of an employee who, due to the effects of an injury, returns to work pursuant to an employer program to accommodate the employee's impairment with work encompassing either lesser exertional requirements or shorter working days and lower earnings than the employee earned prior to the injury;

(c) "Permanent partial disability" means the condition of an employee who, due to the effects of an injury, has a permanent impairment rating pursuant to the latest edition of the "Guide to the Evaluation of Functional Impairment" of the American Medical Association but retains the ability to work; and

(d) "Permanent total disability" means the complete and permanent inability to work as a result of a work-related injury or injuries under this chapter, except that total disability shall be irrebuttably presumed to exist for:

1. Total and permanent loss of sight in both eyes;

2. Loss of both feet at or above the ankle;

3. Loss of both hands at or above the wrist;

4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;

5. An injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;

6. An injury to the skull resulting in incurable insanity or imbecility; or

7. Total loss of hearing[~~"Disability" means a decrease of wage earning capacity due to injury or loss of~~

~~ability to compete to obtain the kind of work the employee is customarily able to do, in the area where he lives, taking into consideration his age, occupation, education, effect upon employee's general health of continuing in the kind of work he is customarily able to do, and impairment or disfigurement]~~.

(12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

(13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.

(14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.

(15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

(16) "Person" means any individual, partnership, firm, association, trust, joint venture, corporation, or legal representative thereof.

(17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from others than the employer as evidenced by the employee's federal and state tax returns.

(18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.

(19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.

(20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.

(21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the ***Kentucky*** Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.

(23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.

(b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

(24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. ***For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.***

(25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates,***

factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. ***For policies covering leased employees as defined in Section 36 of this Act, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in Section 36 of this Act for each leased employee for that portion of the payroll pertaining to the leased employee.***

(b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).

(28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:

(a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred.

The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

(b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.

(c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by ***1.25***[~~1.12~~] and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.

(d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.

(e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).

(f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

(g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection[~~, except that the value for each such employer's claims shall be the total of the indemnity benefits paid by the employer, adjusted to current benefit levels, plus the medical benefits paid~~].

(h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents ($0.30) per one hundred dollars ($100) of the employer's most recent annualized payroll for employees covered by this chapter.

(29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

(30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.

(32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.

(33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods and are not dependent upon the perception of the patient.

(34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a

competitive economy.

Section 2. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. ***The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled.*** The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.

(3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

(a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;

(b) The employee shall be allowed choice of provider within the plan;

(c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

(d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and

(g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.

(h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.

(i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

(5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

(6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.

(7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the

satisfaction of the administrative law judge ***or arbitrator*** by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge ***or arbitrator*** may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, ***arbitrator,*** or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

Section 3. KRS 342.120 is amended to read as follows:

(1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) ***The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred after the effective date of this Act.***[~~A claimant may name the special fund as a party in the original application for benefits, or either party shall as soon as practicable, by motion, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if either or both of the following appears:~~

~~(a) The employee is disabled, whether from a compensable injury, occupational disease, pre-existing disease, or otherwise, and has received a subsequent compensable injury by accident, or has developed an occupational disease;~~

~~(b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.~~

~~(3) All motions to join the special fund shall include proper allegations demonstrating the basis for joinder and certification of the fact that a copy of the motion and the entire case file has been forwarded to the special fund at the cost of the movant.~~

~~(4) Failure to move for joinder of the special fund within the time limit prescribed by this section, without a showing of good cause, shall bar any recovery against the special fund.~~

~~(5) When the special fund has been made a party, the administrative law judge may direct the procedures provided in KRS 342.121.~~

~~(6) If it is found that the employee is a person mentioned in paragraphs (a) or (b) of subsection (2) of this section and a subsequent compensable injury or occupational disease has resulted in additional permanent disability so that the degree of disability caused by the combined disabilities is greater than that which would have resulted from the subsequent injury or occupational disease alone, and the employee is entitled to receive compensation on the basis of the combined disabilities, the employer shall be liable for the payment of all income benefits until the benefits paid have reached a percentage of the full income benefits awarded by the administrative law judge which is equal to the percentage of disability which would have resulted from the latter injury or occupational disease had there been no pre-existing disability or dormant, but aroused disease or condition.~~

~~(7) The remaining compensation for which such resulting condition would entitle the employee, including any compensation~~

~~for disability resulting from a dormant disease or condition aroused into disabling reality by the injury or occupational disease, but excluding all compensation which the provisions of this chapter would have afforded on account of prior disabling disease or injury had it been compensated thereunder, shall be paid out of the special fund provided for in KRS 342.122. Such remaining compensation shall be paid directly to the employee under such regulations as the secretary of finance and administration may provide for such purpose.~~

~~(8) In making the computation for the apportionment of benefits under this section, the administrative law judge shall determine the amount of the employee's weekly income benefits and apportion the award commencing with the employer and special fund as follows:~~

~~(a) For benefits awarded under this chapter, the portions shall be based on the number of weeks stated therein;~~]

(3) [~~(b) In instances~~]Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, ***with the period of payment beginning on the date settlement was approved by an administrative law judge or arbitrator***[~~unless otherwise agreed by all parties~~]. ***This provision is remedial and shall apply to all pending and future claims.***

Section 4. KRS 342.122 is amended to read as follows:

[~~(1) (a) For the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Division of Special Fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and, financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth enacted by the General Assembly, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4) and there is hereby imposed on and after January 1, 1990, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional special fund assessment at the rate of forty-seven percent (47%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1990, an additional assessment at the rate of forty-seven percent (47%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(c) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on such premiums.~~

~~(2) Each November 15, the funding commission shall determine the amount of premiums reported and assessments imposed in subsection (1) of this section for the past period as appropriate. If the funding commission determines that the special fund assessment rate imposed to produce seventy million dollars ($70,000,000) or the additional special fund assessment rate imposed to produce forty million dollars ($40,000,000) are likely to produce more or less than seventy million dollars ($70,000,000) or forty million dollars ($40,000,000) during the next annual period, the commission shall, based upon such determination, calculate such adjustments to each rate as shall be necessary to provide seventy million dollars ($70,000,000) and forty million dollars ($40,000,000) respectively, during the next annual period beginning on January 1 of each year. On or before December 1 of each year, the commission shall notify each insurance company writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the adjusted rates which shall become effective on January 1, of each year, unless modified by the General Assembly.~~

~~(3) (a) Notwithstanding the assessment rates in subsection (1) of this section or the special fund assessment amounts specified in subsection (2) of this section, for calendar year 1995, the funding commission shall impose a special fund assessment rate necessary to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(b) For calendar year 1996 the funding commission shall impose a special fund assessment rate necessary to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(c) 1. The assessment rate calculated to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) under paragraph (a) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every~~

~~employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (a) of this subsection, which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premium, as defined in KRS 342.0011 of every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(d) 1. The assessment rate calculated to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) under paragraph (b) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (b) of this subsection which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premiums, as defined in KRS 342.0011 by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(e) On or before December 1 of 1994 and 1995, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the special fund assessment rates established in this subsection which shall become effective on January 1, 1995, and January 1, 1996, respectively, unless modified by the General Assembly. The payment schedules and other matters relating to the payment of the special fund assessments required pursuant to this section shall apply to the assessment rates and amounts required under this subsection.~~]

(1) ***(a)***[~~(f)~~] For calendar year 1997 and for each calendar year thereafter, ***for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk***[~~the assessment rates and amounts contained in the provisions of subsections (1) and (2) of this section shall apply~~].

(b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

(c) In addition to the assessment imposed in paragraphs (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars ($19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars ($19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars ($4,750,000).

(d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.

(2)[~~(4)~~] These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. ***Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service.*** Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(3)[~~(5)~~] The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

(4)[~~(6)~~] A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(5)[~~(7)~~] The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(6)[~~(8)~~] Each self-insured employer, group self-insurer or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(7)[~~(9)~~] The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(8)[~~(10)~~] The fund heretofore designated as the subsequent claim fund is abolished and there is substituted therefor the special fund as set out by this section and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

[~~(11) Notwithstanding any other provision of this section or this chapter, or the Kentucky Revised Statutes, generally, the assessment rates for the special fund, as determined by this section, which were in force and effect on January 1, 1990, shall continue in force and effect until December 1, 1991, and the total amount of funds collected pursuant to the assessment rates shall not be limited to the provisions of this section.~~]

(9)[~~(12)~~] Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received after December 31, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 5. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386***, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities***;

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in ***this chapter***[~~KRS 342.122~~];

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in ***this chapter***[~~KRS 342.122~~]; and

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

(c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

(d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

(e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

(f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

(5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 6. KRS 342.125 is amended to read as follows:

(1) ***Upon motion by any party or upon an arbitrator's or administrative law judge's own motion, an arbitrator or administrative law judge may reopen and review any award or order on any of the following grounds:***

(a) Fraud;

(b) Newly discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

(2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(3) Except for reopening solely for determination of the compensability of medical expenses, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party.

(4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the arbitrator or administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The arbitrator or administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the arbitrator or administrative law judge[~~In claims where an award or order is entered pursuant to KRS 342.730(1)(a) or (1)(b) and upon its own motion or upon the application of any party and a showing of change of occupational disability, mistake or fraud, or newly-discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. In claims where an award or order is entered pursuant to KRS 342.730(1)(c) or (d) and upon its own motion or upon the application of any party and a showing of change of medical condition, mistake, or fraud, or newly-discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or the administrative law judge may change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. Any final award increasing or diminishing benefits shall require a showing of a change in occupational disability. Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder. The employer shall not suspend the payment of benefits during the pendency of any reopening procedures~~].

(5)[~~(2)~~] (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis ***and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease***, the ***arbitrator or*** administrative law judge may review an award ***or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732***[~~of a retraining incentive benefit because of the diagnosis, and upon a finding of respiratory impairment due to that pneumoconiosis shall make an award for benefits as provided in KRS 342.732. Such a reopening may also occur upon a showing of progression of respiratory impairment in a claim for which benefits were previously awarded under the provisions of KRS 342.732~~]. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings. ***No party may file a motion to reopen within two (2) years of the original award or order granting or denying benefits or within two (2) years of any previous motion to reopen and no claim may be reopened more than four (4) years following the original award or order granting or denying benefits.***

(b) Benefits awarded as a result of a review under this subsection shall be reduced[~~ by the amount of retraining incentive benefits previously awarded and, if applicable, also~~] by the amount of ***retraining incentive benefits or*** income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.

(6)[~~(3)~~] In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.

(7)[~~(4)~~] Where an agreement has become an award by approval of the ***arbitrator or*** administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the ***arbitrator or the*** administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

(8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or

when the award was entered, or the settlement approved. However, claims decided prior to the effective date of this Act may be reopened within four (4) years of the award or order or within one (1) year of the effective date of this Act, whichever is later.

Section 7. KRS 342.213 is amended to read as follows:

(1) The Governor shall make all appointments to the board, appoint the administrative law judges, ***arbitrators,*** and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him by the Workers' Compensation Nominating Commission.

(2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:

(a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.

(b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.

3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

(c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.

(d) The members shall annually select a chairman of the nominating commission.

(e) Notwithstanding the provisions of subsection (2) of this section at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this paragraph the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.

(3) The commissioner shall monitor the workload of the administrative law judges and arbitrators and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred and twenty (120) days prior to the expiration of the terms of the administrative law judges and arbitrators, and when a vacancy occurs under other circumstances, the commissioner shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the commissioner.

(4) (a) The Workers' Compensation Nominating Commission shall consult with the commissioner, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of administrative law judges and arbitrators. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge or arbitrator, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the commissioner of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the commissioner's certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge or arbitrator shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge and as an arbitrator.

(b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.

[~~(3) The Governor shall appoint the administrative law judges in accordance with the provisions of KRS 342.230 from a list of names submitted by the Workers' Compensation Nominating Commission. The list shall contain names of individuals~~

~~who meet the qualifications and requirements contained in KRS 342.230. The administrative law judges shall be subject to Senate confirmation in accordance with KRS 11.160.~~]

(5)~~[(4)]~~ The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.

(6)~~[(5)]~~ (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than ***sixty (60)***~~[ninety (90)]~~ days after a vacancy occurs.

(b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.

(7)~~[(6)]~~ The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars ($100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

Section 8. KRS 342.215 is amended to read as follows:

(1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.

(2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.

(3) Each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who~~[has resigned or]~~ has been removed from his position prior to the expiration of his term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) Members of the Workers' Compensation Board***, arbitrators,*** and the administrative law judges shall be members of the Kentucky Employees Retirement System.

Section 9. KRS 342.228 is amended to read as follows:

(1) The Department of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department shall be administered by a commissioner appointed by the Governor. The Governor shall select the commissioner from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.

(2) The commissioner shall~~[be an attorney and shall]~~ have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

Section 10. KRS 342.230 is amended to read as follows:

(1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, ***arbitrators,*** administrative law judges, and board members, shall be members of the classified service.

(2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges ***and arbitrators*** on an ongoing basis; assign cases; and monitor the caseloads of the

administrative law judges***, arbitrators,*** and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board***,***~~[and]~~ the administrative law judges***, and arbitrators***; annually report the activities of the board***,***~~[and]~~ administrative law judges***, and arbitrators*** to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.

(3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than sixteen (16) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, ***and***~~[or]~~ extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge.~~[The Governor shall appoint the administrative law judges from a list of three (3) names for each administrative law judge position submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213 and for this purpose only, a member of the Workers' Compensation Board shall serve as an ex officio member of the nominating commission.]~~ Each administrative law judge may be employed for additional terms~~[of four (4) years]~~ with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case. ***To carry out the intent of this chapter and to implement its provisions, the commissioner shall have the authority to assign the duties of an arbitrator to an administrative law judge who shall work in that capacity as deemed necessary by the commissioner.***

(4) To ensure that the administrative law judges ***and arbitrators*** perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.

(5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge ***or arbitrator***. A member of the board or an administrative law judge ***or an arbitrator*** may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge***, an arbitrator,*** or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.

(6) Any vacancy in the term of an administrative law judge ***or an arbitrator***, which occurs prior to the expiration of the term, shall be filled ***if necessary*** by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.

(7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end***, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end***. On January 1, 1998, the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

(b) Effective at 12 midnight, December 31, ***1999***~~[1995]~~, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, ***2000***~~[1996]~~, the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

~~[(c) On January 1, 1996, and January 1, 1998, as provided in paragraphs (a) and (b) of this subsection, and every fourth year thereafter, administrative law judges shall be appointed by the Governor for four (4) year terms and confirmed by the Senate in accordance with KRS 11.160. Confirmation hearings for administrative law judges shall be completed by the end of the regular session every four (4) years thereafter beginning with the 1996 Regular Session. Vacancies shall be filled in accordance with subsection (6) of this section.]~~

(8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those ***of other***~~[set forth in this section for]~~ administrative law judges~~[, and to be subject to removal for the same reasons]~~. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, ***and*** providing educational opportunities for the administrative law judges~~[, and supervising the work of the employees of the Department of Workers' Claims who provide staff support for the~~

~~administrative law judges~~]. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional ***three***[~~one~~] thousand dollars ***($3,000)***[~~($1,000)~~] per year. ***At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter.*** The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

(9) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years except as set forth in subsection (11) of this section, not more than eight (8) arbitrators, each of whom shall have extensive knowledge in workers' compensation law and shall be paid the same salary as a District Judge. Each arbitrator may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an arbitrator, shall provide the name of the individual he intends to appoint to the position to the chairman of the Senate Economic Development and Labor Committee. The arbitrators shall conduct benefit review conferences, shall supervise the presentation of evidence, and shall render final decisions, orders, and awards. Arbitrators may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented as will expedite the preparation of the case.

(10) One (1) of the arbitrators appointed pursuant to this section shall be appointed chief arbitrator and in addition to the duties otherwise assigned arbitrators shall assist the commissioner in the scheduling of the activities of the arbitrators and in the supervision and training of arbitrators. The chief arbitrator shall be paid the same rate as the arbitrators plus an additional two thousand ($2,000) dollars per year. At any time, the commissioner may replace the chief arbitrator with one (1) of the other arbitrators at which time the former chief arbitrator shall resume the duties assigned to the other arbitrators pursuant to this chapter.

(11) (a) The terms of four (4) arbitrators appointed pursuant to this section shall end at 12 midnight, December 31, 1997. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

(b) The terms of four (4) arbitrators appointed pursuant to this section shall end at 12 midnight, December 31, 1999. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

Section 11. KRS 342.265 is amended to read as follows:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement ***signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an arbitrator or administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the arbitrator or administrative law judge. Upon claims settled after the effective date of this Act, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the special fund mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.***

(2) Settlement agreements concluded after March 31, 1997, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than ten dollars ($10) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.

(3) Upon lump sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after the effective date of this Act, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 1998, the commissioner shall fix the discount rate to be utilized in the succeeding year based upon the interest rate paid upon ten (10) year United States Treasury Notes as of July 1 of the preceding year.

(4) If the parties have previously filed an agreement which has been approved by the administrative law judge or arbitrator, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income

benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay[~~shall be filed with the administrative law judge, and, if approved by him, shall be enforceable as provided in KRS 342.305. In all cases where all parties have not joined in the settlement agreement, the administrative law judge shall not approve the agreement unless the agreement certifies that the party not participating in the settlement has received a copy of the settlement agreement at least ten (10) days prior to submission of the agreement for approval. Nothing herein shall prevent the voluntary payment of compensation in the amounts and for the periods prescribed in this chapter without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with the administrative law judge and approved by the administrative law judge in accordance with this section. No limitations of time shall begin to run until the date upon which the agreement is filed with and approved by the administrative law judge~~].

Section 12. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application *for resolution of claim*[~~to the commissioner for a hearing in regard to the matter at issue and for a ruling thereon~~]. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made.

(2) *Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an arbitrator for benefit review. The arbitrator shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim*[~~Except with respect to uncontested claims for retraining incentive benefits by reason of occupational pneumoconiosis related to exposure to coal dust, or for disability or death by reason of occupational diseases, within thirty (30) days after the application has been received the commissioner shall set the date for a prehearing conference, to be held as soon as practicable in view of the matter involved, and shall notify the parties at issue of the time and place of the prehearing conference~~].

(3) *(a) The arbitrator shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, or submit medical reports and other information, or refer the employee for medical evaluation.*

(b) If an arbitrator determines in his discretion that a pending claim presents factual issues best resolved through hearing before an administrative law judge, the arbitrator may enter an order transferring the claim to an administrative law judge for further proceedings[~~The prehearing conference shall be at or convenient to the place where the employee resides, provided that such prehearing conference shall be held within the boundaries of the Commonwealth. At the prehearing conference, an administrative law judge shall confer informally with the parties at issue and their counsel, if any, for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposal of the case. If agreement upon any matter is reached, the administrative law judge shall write a memorandum setting forth the matters agreed upon. The administrative law judge and all parties shall sign the memorandum, and the administrative law judge shall file it with the commissioner. Once filed, the memorandum shall become a part of the record~~].

(4) *Except where compelling circumstances justify delay and except as provided in subsection (3)(b) of this section, the arbitrator shall render a written determination upon all matters at issue within ninety (90) days of the assignment of the claim. Through written order, the arbitrator may grant or deny any benefit afforded by this chapter, including interlocutory relief*[~~If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive~~].

(5) *Unless timely appeal is filed as set forth in KRS 342.275, the written determination of the arbitrator shall be a final order enforceable under the provisions of KRS 342.305*[~~An application for adjustment of claim shall be held in abeyance by the administrative law judge during any period voluntary payments of compensation are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle him, unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay~~].

(6) Benefit review conferences shall be held at a place designated by the commissioner, provided that the proceedings shall be held within the boundaries of the Commonwealth.

(7) Within one hundred twenty (120) days of the effective date of this Act, the commissioner shall promulgate administrative regulations establishing procedures for the resolution of claims, which shall include benefit review. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an

emergency basis and be applied to all pending claims.

Section 13. KRS 342.275 is amended to read as follows:

(1) Within thirty (30) days after the filing of the benefit review determination with the commissioner, any party may appeal that determination by filing a request for hearing before an administrative law judge. Proceedings before the administrative law judge shall be de novo but subject to penalties for unreasonable proceedings under KRS 342.310.

(2) The commissioner shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a hearing. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(3) [~~In any claim in which settlement is not reached at the prehearing conference, the administrative law judge shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, except that the conference shall be held within the boundaries of the Commonwealth.~~]The administrative law judge may grant continuances according to criteria established in administrative regulations promulgated by the commissioner.[~~ The commissioner shall notify the parties at issue of the time and place of the hearing.~~] The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless ***extension is*** mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 14. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the ***arbitrator or*** administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The ***arbitrator or*** administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.[~~ The failure to file a petition for reconsideration shall not preclude an appeal on any issue.~~]

Section 15. KRS 342.315 is amended to read as follows:

(1) ***The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.***

(2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

(3) The commissioner, an arbitrator, or an administrative law judge may, upon the application of ***any***[~~either~~] party or upon his own motion, ***direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator***[~~appoint not more than three (3) disinterested and duly qualified physicians or surgeons~~] to make any necessary medical examination of the employee[~~ and to testify in respect thereto~~]. Such ***medical evaluator***[~~physicians or surgeons~~] shall file with the ***commissioner***[~~administrative law judge~~] within fifteen (15) days after such examination a written report. The ***medical evaluator***[~~physicians or surgeons~~] appointed may charge a reasonable fee not exceeding fees ***established by the commissioner***[~~permitted by administrative regulation~~] for ***those services***[~~testimony and reports in workers' compensation claims and by the workers' compensation medical fee schedule for physicians, to be paid out of the special fund~~].

(4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.

(5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.

(6) Not less often than annually the designee of the secretary of the Cabinet for Human Resources shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized

techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter[~~(2) The party filing the motion for an examination shall pay the necessary and reasonable traveling expenses incurred by the employee in submitting to such examination. If the examination is ordered on the administrative law judge's own motion, then such traveling expenses shall be paid out of the special fund~~].

Section 16. KRS 342.316 is amended to read as follows:

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator[~~. Said employer shall have the right to contribution from each previous employer, as determined in an independent civil action, wherein the employee was similarly exposed to the hazard of said occupational disease, in a sum equal to the ratio that each exposure employment time bears to the total exposure employment time, except as otherwise provided in paragraph (a) of subsection (10) of this section~~]; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later[~~, except that the time of the beginning of retraining incentive benefits awarded under KRS 342.732 shall be the date the award for those benefits by the administrative law judge becomes final~~].

(2)[~~(a)~~] The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur***.***[~~;~~]

(3) [~~(b) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to~~] filing ***occupational disease***[~~of~~] claims shall be as follows:

(a)[~~1. a.~~] The application ***for resolution of claim*** shall set forth the complete work history of the ***employee***[~~applicant~~] with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least ***one (1)***[~~two (2)~~] written medical ***report***[~~reports~~] supporting his claim. ***This***[~~These~~] medical ***report***[~~reports~~] shall be made on the basis of[~~ comprehensive~~] clinical ***or X-ray examination***[~~ examinations~~] performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The ***report***[~~reports~~] shall be made by ***a*** duly-licensed ***physician***[~~physicians~~]. The commissioner shall promulgate administrative regulations which prescribe the format of the medical ***report***[~~reports~~] required by this section and the manner in which the ***report***[~~reports~~] shall be completed.

1.[~~b.~~] For coal-related occupational pneumoconiosis claims, each clinical examination shall include ***a*** chest X-ray ***examination as well as***[~~examinations and~~] spirometric tests ***when pulmonary dysfunction is alleged***.

2.[~~c.~~] For other compensable occupational pneumoconiosis claims, each clinical examination shall include ***a chest*** X-ray ***examination***[~~examinations~~] and appropriate pulmonary function tests.

(b)[~~2.~~] To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust, shall comply with accepted medical standards as follows:

1.[~~a.~~] Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

2.[~~b.~~] Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of [~~subsection (2)(b) of~~]this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. [~~(c) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to the~~] determination of ***occupational disease*** claims shall be as follows:

a.[~~1.~~] Immediately upon receipt of ***an application for resolution***[~~said application for adjustment~~] of claim, the commissioner shall notify the ***responsible***[~~affected~~] employer,[~~ the special fund,~~] and ***all***[~~any~~] other interested ***parties***[~~party of such claim~~] and shall furnish them with a full and complete copy of the ***application.*** [~~claim;~~]

b. The commissioner shall assign the claim to an arbitrator and shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years following any prior referral for examination for the same disease.

c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.

d. The arbitrator shall conduct such proceedings as are necessary to resolve the claim, and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.

e. Unless a voluntary settlement is reached by the parties, the arbitrator shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.

5. The procedure for appeal from a determination of an arbitrator shall be as set forth in KRS 342.275.

[~~2. Upon receipt of notice of the claim, the employer, the special fund, and any other interested party shall have the right to have the claimant examined by competent medical experts, at their expense, including a reasonable sum for travel. Within thirty (30) days of any such examination, the claimant or his representative shall be furnished a copy of said medical report by the party requesting such report. Also, the employer, the special fund, or any other party to the claim shall have the right to have the claimant evaluated by vocational experts or institutions, at the employer's expense, including a reasonable sum for travel. Within thirty (30) days of any vocational examination, the claimant or his representative, shall be furnished a copy of that vocational report by the party requesting that report; and~~

~~3. Within sixty (60) days of the receipt of the claim, the employer, the special fund, and any other interested party shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, then an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall set a date for a prehearing conference and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the commissioner shall be followed. Upon request of an interested party and a showing of good cause, the administrative law judge may extend, one (1) time, the time period for filing a notice of resistance as prescribed in this subparagraph, but the extension shall not exceed thirty (30) days.~~

~~(d) For claims filed under subsection (1)(a) of KRS 342.732, the procedure shall be as follows:~~

~~1. For retraining incentive benefits under KRS 342.732, the claimant shall file two (2) X-rays and the reports thereof which shall conform to the standard for X-rays contained in this subsection.~~

~~2. The commissioner shall notify the affected employer of the claim and shall furnish him with a full and complete copy of the claim.~~

~~3. Within sixty (60) days of the receipt of the claim, the employer shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall notify the affected employee thereof. In litigated claims, the regular procedures prescribed by the commissioner shall be followed.~~]

(4)[~~(3)~~] (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or, if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income[~~ or retraining incentive~~] benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(5)[~~(4)~~] The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:

(a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and

(c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section***, except as provided in KRS 342.750(6)***.

(6)[~~(5)~~] If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

(7)[~~(6)~~] No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(8)[~~(7)~~] No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.

(9)[~~(8)~~] Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard[~~ by the administrative law judge~~] when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

(10)[~~(9)~~] When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided in this chapter.

(11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in Section 34 of this Act and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.

(b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.

(12) A concluded claim for benefits by reason of contraction of coal workers pneumoconiosis shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

[~~(10) (a) Except as provided in paragraph (c) of this subsection, the employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employee was last exposed to the hazard of that occupational disease. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the special fund for all claims filed prior to January 1, 1973; and seventy five percent (75%) shall be paid by the special fund and twenty five percent (25%) by the employer for all claims filed thereafter. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the special fund, and the employer shall be liable for sixty percent (60%) of the compensation due and the special fund shall be liable for forty percent (40%) of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the special fund under this section, all of the compensation awarded shall be paid pursuant to KRS 342.120 and under such regulations as the commissioner may provide for such purpose; and~~

~~(b) In all claims for compensation partially payable by the special fund, the Director of the Division of the Special Fund shall be designated as codefendant.~~

~~(c) The employer in whose employment the employee was last exposed to the hazard of the disease shall alone be liable for payment of retraining incentive benefits awarded under KRS 342.732.~~]

Section 17. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge ***or arbitrator*** pursuant to the statutes and administrative regulations.

(2) Attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) One thousand dollars ($1,000) for services performed up to and including the date of a written determination by the arbitrator. This fee shall be paid by the employee from the proceeds of the award or settlement.

(b) Upon an appeal by an employee from a written determination of an arbitrator or an award or order of an administrative law judge, a fee to be fixed by the administrative law judge upon consideration of the extent, quality and complexity of services not to exceed twenty percent (20%) of the first twenty-five thousand dollars ($25,000) of any increased income benefits awarded, ten percent (10%) of the next fifteen thousand dollars ($15,000) of increased income benefits, and five percent (5%) of the remainder of the additional income benefits awarded and not to exceed in all ten thousand dollars ($10,000). This fee shall be paid by the employee from the proceeds of the award or settlement and shall be in addition to the fee, if any, awarded under subsection (2)(a) of this section.

(c) Upon an appeal by an employer or carrier from a written determination of an arbitrator or an award or order of an administrative law judge, if the employer or carrier does not prevail upon appeal, the administrative law judge shall fix an attorney's fee to be paid by the employer or carrier for the employee's attorney upon consideration of the extent, quality, and complexity of the services rendered not to exceed five thousand dollars ($5,000) per level of appeal. This attorney's fee shall be in addition to any fee awarded under

subsections (2)(a) and (b) of this section.

(3) In approving an allowance of attorney's fees, the administrative law judge or arbitrator shall consider the extent, complexity, and quality of services rendered, and[~~In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable~~] in the case of death,[~~ and then by the use of~~] the Remarriage Tables of the Dutch Royal Insurance Institute. ***An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court***[~~However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000)~~].[~~ The administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~]. The date of injury or last exposure shall control the applicable maximum attorney's fee[~~, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~].

(4)[~~(2)~~] No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ***arbitrator or*** administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the ***written determination of an arbitrator or*** last appealable order of ***an***[~~the~~] administrative law judge. ***Except when the attorney's fee is to be paid by the employer or carrier,*** the attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The ***arbitrator or*** administrative law judge, upon request of the ***employee***[~~claimant~~], may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(5)[~~(3)~~] ***At the commencement of the attorney-client relationship,*** the attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(6)[~~(4)~~] The General Assembly declares that by the enactment of KRS 342.316***(3)***[~~(2)(b)~~], it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ***and arbitrator*** shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(7)[~~(5) The administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated below are followed:~~

~~(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).~~

~~(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.~~

~~(6) (a)~~] In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ***arbitrator or*** administrative law judge ***subject to the limits set forth in subsection (2) of this section***. In awarding the attorney's fee, the ***arbitrator or*** administrative law judge shall consider the factors set forth in subsection ***(3)***[~~(1)~~] of this section. ***If no additional amount is recovered upon reopening, no attorney's fee shall be awarded***[

~~(b) Thereafter, the administrative law judge shall fix the attorney's fee~~]. No[~~ attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any~~] attorney's fee ***shall*** be allowed or approved exceeding the amounts provided in subsection ***(2)(b)***[~~(1)~~] of this section applicable to any additional amount recovered.[~~ If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee.~~]

(8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge or arbitrator in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the same limitations as to maximum fees at each level except that fees for representation before administrative law judges shall not exceed ten thousand dollars ($10,000) and fees for representing employers shall not be dependent upon the result achieved. Fees for legal services in presenting a claim for re-imbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars ($1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

(9) The provisions of this section shall apply to all claims resolved pursuant to emergency administrative regulations promulgated by the commissioner pursuant to this chapter.

Section 18. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 19. KRS 342.335 is amended to read as follows:

(1) No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to ***delay or*** omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, ***which may affect the amount of money received or not paid,*** including***:***

- ***(a) Misrepresentations of prior loss experience, hazards, classifications, payrolls, or other acts that are designed to cause a reduction in an employer's insurance premium;***
- ***(b) Prepare, make or present a false, fraudulent, or misleading statement, oral or written, for the purpose of obtaining benefits or compensation;***
- ***(c) Prepare, make, or present false or counterfeit insurance policies, certificates of insurance, insurance binders, or other documents including those relating to self-insurance, purporting to evidence with this chapter as to security; and***
- ***(d) Prepare, make or present false billing for services rendered or products delivered;***

[~~ misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, ~~]shall be subject to the civil or criminal penalties, or both, imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

(3) All workers' compensation fraud investigations, except for claimant fraud investigations conducted by the Division of Special Fund, shall be conducted by the Department of ***Workers' Claims and appropriate staff shall be added to aggressively perform that function. Any report of alleged violations of subsections (1) and (2) of this section received by the Department of Insurance shall be forwarded to the Department of Workers' Claims for appropriate action. Investigators within the department shall be vested with the following power and authority:***

- ***(a) General police powers including the privileges and immunities of sheriffs, and their jurisdiction shall be coextensive with the state;***
- ***(b) Administer oaths and affirmations;***
- ***(c) Collect evidence; and***

(d) Make arrests for criminal violations of this chapter established as result of its investigations.

(4) The commissioner shall have the power to issue subpoenas to order the attendance of witnesses or proffering of information and documentation relating to any alleged violation of sections (1) or (2) of this section.

(5) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies to any transaction arising from activities relating to this chapter.

[~~Insurance or the Attorney General.~~]

SECTION 20. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that the establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation, to make provisions for the general welfare of workers and their dependents, to relieve the consequences of any industrial injury or death, and to secure the payment of workers' compensation benefits provided by this chapter.

(2) The General Assembly further finds and declares that provision must be made for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet obligations because of insolvency. It is for that purpose that the General Assembly establishes mechanisms requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty associations, one (1) of whose members shall be composed of individually self-insured employers excluding individually self-insured coal employers and public sector employers; one (1) shall be composed of group self-insurers created pursuant to KRS 342.350(4); and one (1) shall be composed of individually self-insured coal operators.

SECTION 21. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

As used in Section 20 to 26 of this Act, unless the context requires otherwise:

(1) "Insolvent self-insurer" means either an individual self-insured employer or a group self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the commissioner, or who has failed to provide compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner.

(2) "Member" means a self-insured employer or self-insurance group that participates in a guaranty fund created pursuant to Sections 20 to 26 of this Act.

(3) "Guaranty fund" means one of the three (3) guaranty funds established pursuant to Sections 20 to 26 of this Act.

(4) "Directors" means the board of directors of a guaranty fund.

(5) "Certificate of default" means a notice issued by the commissioner based upon a finding that a self-insured employer or self-insurance group has failed to pay compensation required by this chapter.

SECTION 22. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, public sector self-insured employers or self-insurance groups are specifically exempted from the provisions of Sections 20 to 26 of this Act.

SECTION 23. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each noncoal, individually self-insured employer who has qualified and been certified by the commissioner as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The commissioner shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.

(2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insurance groups or associations established under KRS 342.350(4), to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each self-insurance group or association that is authorized to self-insure and certified by the commissioner to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The commissioner shall revoke any authorization and certificate to self-insure of any self-insurance group or association for failure to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection .

(3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund

to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insurance group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance or reinsurance, required by this chapter. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a "plan of operation" pursuant to administrative regulations promulgated by the commissioner.

(5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

(6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insurance group or association. In addition, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.

(7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance, and borrow funds as it deems necessary for the protection of the members and their employees.

(8) Security called by the commissioner and dispersed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly, or any other state agency.

(9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.

(10) No liability shall lie, whether at law or in equity, against any director, agent or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

SECTION 24. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.

(2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the department of workers' claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.

(3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

(4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, provided that no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars ($1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and, three-fourths of one percent (0.75%)of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

(5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars ($500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars ($500,000) or such other amount not to exceed, in any event, one million dollars ($1,000,000) based upon a maximum annual assessment for each guaranty fund.

(6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members.

(7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.

(8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

SECTION 25. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Each guaranty fund, by making payment of compensation under this chapter, has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.

(2) Notwithstanding subsection (1) of this section, each guaranty fund shall not be liable for the payment of any penalties or interest assessed for any act or omission on the part of any person, including but not limited to the penalties provided in this chapter.

(3) Each guaranty fund shall be a party in interest in all proceedings involving compensation claims against an insolvent member whose compensation obligations have been paid or assumed by the guaranty fund. The guaranty fund shall have the same rights and defenses as the insolvent individual self-insurer.

(4) Each guaranty fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by each guaranty fund, including reasonable administrative and legal costs.

(5) Each guaranty fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the guaranty fund, including but not limited to any excess insurance carrier of the insolvent member.

SECTION 26. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner and to each member.

(2) ***Each guaranty fund shall be established on March 1, 1997.***

(3) ***The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the guaranty fund is established.***

Section 27. KRS 342.610 is amended to read as follows:

(1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.

(2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another (a) to have work performed consisting of the removal, excavation or drilling of soil, rock or mineral, or the cutting or removal of timber from land, or (b) to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of such person, shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

(3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by[~~ his~~] intoxication***, the influence of an illegal drug or drugs,*** or by his willful intention to injure or kill himself or another.

(4) If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.

(5) ***Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage for all persons employed or engaged to perform services on the site of the construction project for which the permit is to be issued. A property owner who intends to perform all of the construction work himself or herself or pursuant to the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter shall so certify to the local building official, in writing and on a form prescribed by the commissioner, in lieu of providing proof of workers' compensation coverage.***

Section 28. KRS 342.640 is amended to read as follows:

(1) The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(a)[~~(1)~~] Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(b)[~~(2)~~] Every executive officer of a corporation;

(c)[~~(3)~~]Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire or police department shall be deemed for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled volunteer member or trainee of the civil defense corps of this state, as established under KRS Chapter 39, shall be deemed for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed for the purposes of this chapter to be in the employment of this state;

(d)[~~(4)~~] Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(e)~~[(5)]~~Subject to the provisions in ***paragraph (d)***~~[subsection (4)]~~ of this ***subsection***~~[section]~~, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

(2) Every employer subject to this chapter shall, at each job site in a location accessible to all employees, conspicuously post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner. The format and contents of the notice shall be established by the commissioner through administrative regulation and copies shall be provided to the employer by its insurance carrier.

Section 29. KRS 342.715 is amended to read as follows:

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the ***arbitrator or*** administrative law judge, the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the percentage of disability as determined in this chapter.

Section 30. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For ***permanent*** total disability due to a work-related injury or occupational disease, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related ***impairment and conditions compensable under KRS 342.732 and hearing loss***~~[disability]~~ shall not be considered in determining whether the employee is totally disabled for purposes of this subsection ***and shall not extend the maximum period for payment of disability benefits***.

(b) For permanent, partial disability,~~[where an employee returns to work at a wage equal to or greater than the employee's preinjury wage,]~~ sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by ***the***~~[his]~~ percentage of impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***times the factor set forth in the table that follows:***~~[unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section.]~~

AMA Impairment	***Factor***
0 to 5%	***.75***
6 to 10%	***1.00***
11 to 15%	***1.25***
16 to 20%	***1.50***
21 to 25%	***1.75***
26 to 30%	***2.00***
31 to 35%	***2.25***
36 and above	***2.50***

~~[The period of]~~Disability under this paragraph for nonwork-related disabilities ***and conditions previously compensated under this chapter*** shall not extend the maximum period ***or the amount*** of ***partial*** disability~~[under this paragraph]~~. ***Impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in Section 38 of this Act shall not be considered in determining the extent of disability or the duration of payments due under this section.*** Any temporary ***partial or temporary*** total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) ~~[For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.~~

~~(d)~~]For permanent, partial disability, if an employee sustains[~~ impairment or~~] disability[~~ in excess~~] of fifty percent (50%) ***or less*** as a result of a work-related injury[~~ or occupational disease and prior work-related active disability~~] the compensable permanent partial disability period shall[~~ then~~] be ***four hundred twenty-five (425) weeks, and if the disability is greater than fifty percent (50%), the compensable permanent partial disability period shall be*** five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. ***Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and in no event shall exceed seventy-five percent (75%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred and twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in subsection (1)(b) of this section would yield a greater percentage of disability.***

(d) For temporary, partial disability, when the employee has returned to work pursuant to an employer program to accommodate the employee's impairment with work encompassing lesser exertional requirements or shorter working days, and lower earnings than the employee's average weekly wage earned, the insurance carrier shall pay an amount equal to eighty-five percent (85%) of the employee's average weekly wage not to exceed one hundred percent (100%) of the state average wage less the actual earnings of the employee while in the accommodated duty program. Temporary, partial disability benefits shall be paid for a period not to exceed fifty-two (52) weeks. An employee's refusal to accept accommodated duty employment within reasonably imposed medical restrictions shall result in a forfeiture of income benefits during the period of refusal. Disputes concerning a purported failure of an employee to accept suitable accommodated duty employment shall be resolved by an arbitrator in expedited proceedings[~~Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection~~].

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) ***All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old age Social Security retirement benefits***[~~If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday~~].

(5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.

(6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan, which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.

Section 31. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

(1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.

(d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, 25 percent.

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.

(6) ***In addition to other benefits as provided by this chapter,*** if death occurs ***within four (4) years of the date of injury*** as a direct result of a work related injury,~~[and the deceased has no statutory dependents, as determined by this section,]~~ a lump-sum payment of ***twenty-five thousand dollars ($25,000)***~~[$10,000]~~ shall be ***made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be*** paid~~[to his estate, in addition to the amount provided for in KRS 342.720; provided, however, that the lump-sum payment shall be reduced by any income benefits previously paid on account of that injury]~~.

(7) All benefits awarded pursuant to this section***, other than those provided in subsection (6) of this section,*** shall be subject to the limitations contained in KRS 342.730(4).

Section 32. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.

(2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the ***arbitrator,*** administrative law judge***,*** or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of ***all*** the amounts authorized to be paid therefrom under the authority of this subsection ***including reimbursement of the special fund of all liability apportioned to it*** and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. ***This provision shall apply to all pending claims upon which a final order has not been entered.***

(5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the

assets of the fund.

(6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

Section 33. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If ***an employee has a radiographic classification of category 1/1 or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by report of X-ray which conforms to the standards for X-rays contained in subsection (2) of KRS 342.316, and respiratory impairment resulting from exposure to coal mine dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to eighty percent (80%) of the employee's average weekly wage as determined by KRS 342.740 but not more than one hundred percent (100%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks. These benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking twenty-four (24) or more instruction hours per week in a bona fide training or education program approved***[~~the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X rays and reports of the X-rays which conform to the standards for X rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only retraining incentive benefit which shall be an amount equal to sixty six and two thirds percent (66 2/3%) of the employee's average weekly wage but not more than seventy five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not to exceed two hundred and eight (208) weeks. These benefits may be paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be collected semimonthly as provided in KRS 342.040. While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved~~] under administrative regulations to be promulgated by the commissioner***. The employer shall also pay***,[~~ benefits awarded under this paragraph shall be paid~~] directly to the institution conducting the training or education program***, instruction, tuition, and material costs not to exceed five thousand dollars ($5,000)***[~~on a semimonthly basis~~]. The benefit shall not be paid for a period in which the employee ceases to participate in the program. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)***. The period of one hundred four (104) weeks during which this benefit is payable shall begin no later than the one hundred eightieth day after the order awarding the benefit becomes final. If an employee completes an approved program of training in less than one hundred four (104) weeks and that employee has accepted a bona fide offer of employment at a location more than fifty (50) miles from the employee's usual residence in the field for which the employee has been trained, the employee shall be paid in a lump sum for relocation the lesser of the sum of three thousand dollars ($3,000) or the amount remaining in unpaid weekly training benefits as provided by this section***[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category[~~ 1/0,~~] 1/1[~~,~~] or 1/2, based on the latest ILO International Classification of Radiographics[~~,~~] and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of ***less than*** fifty-five percent (55%)[~~ or more but less than eighty percent (80%)~~] of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association***, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***[~~,~~] there shall be an irrebuttable presumption that the employee has an occupational disability rating of ***fifty***[~~seventy five~~] percent ***(50%)***[~~(75%)~~] resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of ***fifty percent (50%)***[~~seventy-five (75%)~~] but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred and twenty-five (425) weeks, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(c) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category ***2/1, 2/2, or 2/3 coal workers' pneumoconiosis***[~~1/0, 1/1, or 1/2~~], based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association ***or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***, there shall be an irrebuttable presumption that the employee is ***seventy-five percent (75%)***[~~totally~~] disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage ***multiplied by the disability rating of seventy-five percent (75%)*** but not ***to exceed***[~~more than~~] ***seventy-five***[~~one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. ***The award shall be payable for a period not to exceed five hundred and twenty (520) weeks.*** Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d) If ***it is determined***[~~the administrative law judge finds~~] that an employee has ***radiographic classification of 3/2 or 3/3*** occupational pneumoconiosis ***based on the latest ILO International Classification of Radiographs, and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the latest edition of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association,***[~~with a radiographic classification of category 2/1, 2/2, 2/3, 3/2, 3/3,~~] or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge ***or arbitrator*** that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge ***or arbitrator*** shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

(4) In no event shall income benefits awarded under[~~ paragraphs (a) or (b) of subsection (1) of~~] this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

SECTION 34. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Division of the Kentucky Coal Workers' Pneumoconiosis Fund in the Department of Workplace Standards which shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration and legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written

request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.

(3) The Kentucky coal workers' pneumoconiosis fund shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after the effective date of this Act. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the coal workers' pneumoconiosis fund is established under subsection (4) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.

(4) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.

(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents ($0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.

(c) As of September 1, 1997, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than December 1 of the year preceding the rate change.

(5) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.

(6) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

(7) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

SECTION 35. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner or his designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds or self-insured groups and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be

exempt from disclosure, under KRS 61.878(1)(j).

(2) All individual self-insured employers and self-insurance groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year. For self-insurance groups, the financial statement shall include an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods used.

(3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioners' designees, and expert assistance as necessarily incurred in the examination.

(4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

(5) Not less often than biennially the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of self-insureds so that payment of liabilities to workers under this chapter is assured.

SECTION 36. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Employer leasing company" or "lessor" means an entity that places employees in other businesses pursuant to an employee leasing arrangement.

(b) "Lessee" means an employer which obtains all or part of its workforce from another entity through an employee leasing arrangement.

(c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.

(d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employer responsibilities among two (2) or more entities. For purposes of this rule, employee leasing arrangement does not include arrangements to provide temporary workers.

(e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short term workload conditions, not to exceed ninety (90) calendar days. For temporary workers, the leasing company shall be deemed the employer and shall be subject to the provisions of this chapter. The lessee that leases employees from a leasing company shall be deemed the employer unless the leased employee is a temporary worker.

(2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.

(3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

(4) A lessee shall fulfill its statutory responsibility to secure benefits under the Workers' Compensation Act by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. The exposure and experience of the lessee shall be used in determining the premium for such policy and shall include coverage for all leased employees.

SECTION 37. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information pursuant to KRS 342.335 or requested by the commissioner or his authorized representative. No civil cause of action of any nature shall arise against the person:

(a) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from law enforcement officials, their agents, or employees;

(b) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from other persons; or

(c) For any information furnished in reports to the commissioner.

(2) The commissioner or any employee or agent of the Department of Workers' Claims shall not be subject to civil liability for libel, slander, or any other relevant tort relating to the execution of their duties pursuant to KRS 342.335 and KRS 342.990. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the Department of Workers' Claims or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) KRS 342.335 and KRS 342.990 shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

(4) The papers, documents, reports, or evidence relative to the information or reports received under KRS 342.335 shall not be subject to public inspection for so long as the commissioner deems reasonably necessary for the completion of any investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to any investigation shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of violations of KRS 342.335.

SECTION 38. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment the extent of binaural hearing impairment shall be determined under the latest available edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730 except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than eight percent (8%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.

(3) The commissioner shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.

(4) When audiograms and other testing reveals a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace there shall be a rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

Section 39. KRS 342.803 is amended to read as follows:

(1) The ***Kentucky*** Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of~~[Subtitle 24 and other provisions of]~~ KRS Chapter 304 applicable to domestic mutual insurance companies unless otherwise provided or exempted in KRS 342.801 to 342.843~~[and KRS 304.13-340]~~.

(2) Except for initial funding for start-up, the authority shall be entirely self-supporting.

(3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4) ~~[On or before September 1, 1995,]~~The authority shall~~[begin to]~~ provide coverage and issue policies~~[, as provided in subsection (1) of this section,]~~ as an insurer in the voluntary market and as ***an insurer of last resort***~~[a residual market mechanism]~~.

Section 40. KRS 342.805 is amended to read as follows:

As used in KRS 342.801 to 342.843~~[and KRS 304.13-340]~~, unless the context otherwise requires:

(1) "Authority" means the ***Kentucky*** Employers' Mutual Insurance Authority.

(2) "Board" means the board of directors of the authority.

(3) ***"Insurer of last resort" means an entity that provides workers' compensation coverage to any and all employers who comply with the provisions of KRS 342.801 to 342.843 for their business in and incidental to the Commonwealth.***

(4) "Manager" means the manager of the authority.

(5)~~[(4)]~~ "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage under this authority.

Section 41. KRS 342.811 is amended to read as follows:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to~~[Subtitle 24 of]~~ KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

(1) Sue or be sued;

(2) Hire a manager to administer the authority;

(3) Adopt a corporate seal;

(4) Develop bylaws for the operation of the authority;

(5) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;

(6) Examine and adopt an annual operating budget for the authority;

(7) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;

(8) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;

(9) Develop broad policy for the long-term operation of the authority consistent with its mission and fiduciary responsibility;

(10) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A;

(11) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness***;***~~[.]~~

(12) ***Pursuant to***~~[Subject to Subtitle 13 of]~~ KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;

(13) Pursuant to KRS 342.823, assess policyholders~~[to cover its liabilities as provided in KRS 304.24-230]~~; and

(14) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843~~[and KRS 304.13-340]~~.

Section 42. KRS 342.817 is amended to read as follows:

(1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks ***for the authority***.

(2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the ***market of last resort***~~[residual market]~~ and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.

(3) Multitiered premium or rating plans may be developed to provide ***workers' compensation*** coverage to insureds ***in the Commonwealth***~~[in the residual market mechanism established by the authority, and who would not otherwise meet the underwriting standards required by the authority]~~.

(4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a ***market of last resort***~~[residual market mechanism]~~.

(5) The rates ***established***~~[developed]~~ by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.

(6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the insurance commissioner in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.

(7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for ***eighty-four (84)***~~[thirty six (36)]~~ months.

Section 43. KRS 342.823 is amended to read as follows:

(1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not

utilize the practice of "discounting" the funds to reduce future liabilities ***except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners***~~[by the amount of future anticipated investment income]~~.

(2) The board shall submit an annual independently-audited ***financial statement***~~[report]~~ in accordance with procedures governing annual ***statements***~~[reports]~~ adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year. The ***statement***~~[report]~~ shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the co-chairs of the Legislative Research Commission. It shall indicate the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

(a) A summary of the prior quarterly reports required in KRS 342.821;

(b) An actuarial projection of solvency status for at least ten (10) years in the future; and

(c) Any recommendations pertaining to the same.

(3) If ***at any time*** the assets of the authority~~[at any time]~~ are less than its liabilities, the board ***may***~~[shall]~~ levy an assessment on its policyholders***. The board may***~~[and]~~ enforce payment of the assessment in the manner provided in Subtitle 24 of KRS Chapter 304.

Section 44. KRS 342.841 is amended to read as follows:

The ***board***~~[authority]~~ shall comply with KRS Chapter 61 in regard to open meetings and the conduct of ordinary business, except that proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth may be closed to the public. ***The authority shall act as any other domestic mutual insurance company with regard to all of its records. Any request for records shall be in writing. Any records requested shall be in pursuit of the investigation and the confidentiality of the information in the records shall be maintained.***

SECTION 45. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of any other law notwithstanding, the Governor shall include in the budget recommendation for the executive branch and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly for the biennium period beginning July 1, 1998, and for each biennium thereafter, recommendations for appropriations as provided in subsection (1)(c) of Section 4 of this Act to be made by the General Assembly to the benefit reserve fund within the Workers' Compensation Funding Commission established by KRS Chapter 342.

(2) The amount to be recommended for appropriation to the benefit reserve fund within the Workers' Compensation Funding Commission shall be nineteen million dollars ($19,000,000) of the coal severance tax, levied under KRS 143.020, estimate for each fiscal year of the biennium.

Section 46. 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section I. Labor, at pages 1901 and 1902, is amended to read as follows:

I. LABOR

59. LABOR CABINET

a. General Administration and Support

		1996-97	1997-98
General Fund		485,900	503,800
Restricted Funds		***3,612,900***	***3,691,700***
~~[Restricted Funds~~		~~3,556,700~~	~~3,607,000]~~
Total		***4,098,800***	***4,195,500***
~~[Total~~	~~4,042,600~~	~~4,110,800~~	

b. Workplace Standards

		1996-97	1997-98
General Fund		1,660,700	1,730,600
Restricted Funds		***182,090,200***	***203,824,400***
~~[Restricted Funds~~		~~177,871,200~~	~~195,454,900]~~
Federal Funds		2,419,700	2,303,100
Total		***186,170,600***	***207,858,100***
~~[Total~~	~~181,951,600~~	~~199,488,600]~~	

c. Workers Claims

	1996-97	1997-98
Restricted Funds	***12,180,000***	***15,273,700***
[~~Restricted Funds~~	~~10,159,800~~	~~10,614,200~~]

d. Kentucky Occupational Safety and Health Review Commission

	1996-97	1997-98
Restricted Funds	272,700	293,600
Federal Funds	169,700	161,200
Total	442,400	454,800

TOTAL - LABOR CABINET

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***198,155,800***	***223,083,400***
[~~Restricted Funds~~	~~191,860,400~~	~~209,969,700~~]
Federal Funds	2,589,400	2,464,300
TOTAL	***202,891,800***	***227,782,100***
[~~TOTAL~~	~~196,596,400~~	~~214,668,400~~]

60. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	1996-97	1997-98
Restricted Funds	***202,665,200***	***227,588,900***
[~~Restricted Funds~~	~~196,369,800~~	~~214,475,200~~]

TOTAL - LABOR

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***400,821,000***	***450,672,300***
[~~Restricted Funds~~	~~388,230,200~~	~~424,444,900~~]
Federal Funds	2,589,400	2,464,300
TOTAL	***405,557,000***	***455,371,000***
[~~TOTAL~~	~~392,966,200~~	~~429,143,600~~]

The credit provided for in subsection (1)(c) of Section 4 of this Act shall be made prior to the transfer to the Local Government Economic Assistance Fund required by 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operations, Item 12. Special Funds at pages 1876 and 1877, and notwithstanding KRS 42.4582. The appropriations to the Local Government Economic Assistance Fund and the Local Government Economic Development Fund contained in 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operation, Item 12. Special Funds, shall be adjusted accordingly. This Section of this Act prevails over any conflicting provision of 1996 Kentucky Acts Chapter 382, the 1996-98 State/Executive Branch Budget Memorandum.

Section 47. KRS 342.990 is amended to read as follows:

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a

ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(c) Any person who violates KRS 342.020(9), 342.035(2), KRS 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation.

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District and Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Except as provided in paragraph (d) of this subsection, a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a misdemeanor where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300), and shall be punished for each offense by:

1. Imprisonment for not more than one (1) year;

2. A fine of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. or 2. of this paragraph.

(d) Where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300), a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a felony and shall be punished for each offense by:

1. Imprisonment for not less than one (1) nor more than five (5) years;

2. A fine of not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violations, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(e) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in Section 36 of this Act for the purpose of depriving one or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium, shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred and eighty (180) days, or both, for each offense.

(f) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner, in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer, in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any arbitrator, administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

SECTION 48. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Within sixty (60) days of the effective date of this Act, the licensed workers' compensation advisory organizations shall file with the commissioner an estimate of changes in prospective workers' compensation losses attributable to any net savings under this Act. Within sixty (60) days of receipt of the workers' compensation filing, the commissioner shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.

(2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under this Act for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the commissioner as provided in KRS 304.13-051(2).

(3) Unless the commissioner enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).

SECTION 49. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this chapter, the commissioner shall evaluate alternate methods of establishing workers' compensation insurance rates for employers in the construction industry and may by administrative regulation

prescribe that insurance carriers base their premium determination methodology for certain classifications of workers' compensation insurance on the aggregate number of hours worked by employees of the employers with specific Standard Industrial Classification Codes rather than upon the gross wages paid by the employer.

Section 50. KRS 304.13-161 is amended to read as follows:

(1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.

(2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the commissioner for further review of the application of the rating system. The commissioner shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The commissioner may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.

(3) Notwithstanding any provision of this chapter to the contrary, the commissioner shall require, as a condition of licensure to conduct or market workers' compensation insurance in the Commonwealth, each insurer or agent thereof to notify in writing each insured at the time a workers' compensation insurance policy is written, issued, or renewed on or after April 1, 1997, of the insured's rights afforded by this section. Failure to provide written notice to an insured shall be grounds to suspend or revoke a license to conduct or market workers' compensation insurance in the Commonwealth. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in a manner and format prescribed through administrative regulations promulgated by the commissioner.

(4) On each workers' compensation insurance policy issued or renewed on or after April 1, 1997, the workers' compensation insurer shall provide the policyholder with a written explanation of the following:

(a) The insured's experience modification factor and the data and methodology utilized in the calculation of the factor;

(b) The workers' compensation rating laws in easily understandable and nontechnical language; and

(c) The workers' compensation policyholder's rights under this subtitle to request and receive rating information from the commissioner.

Section 51. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the ***arbitrator or*** administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

Section 52. KRS 342.040 is amended to read as follows:

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid except that if the ***arbitrator or*** administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate, or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

(2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the ***arbitrator or*** administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.

(3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the

employer, commencing with the second regular payday after the award of the retraining incentive benefit by the ***arbitrator or*** administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.

(4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Section 53. KRS 342.090 is amended to read as follows:

Payment of death benefits in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the ***arbitrator or*** administrative law judge shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the ***arbitrator or*** administrative law judge directing payment, persons receiving payment under such order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

Section 54. KRS 342.160 is amended to read as follows:

(1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the ***arbitrator or*** administrative law judge. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.

(2) If the dependents are a widow, widower or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator or next friend of such dependents.

Section 55. KRS 342.205 is amended to read as follows:

(1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the ***arbitrator or*** administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.

(2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.

(3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

(4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the ***arbitrator or*** administrative law judge may require.

(5) The department shall supply forms for the report.

Section 56. KRS 342.240 is amended to read as follows:

The department shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The commissioner shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the ***arbitrators and*** administrative law judges, on which shall be inserted the words "Department of Workers' Claims, State of Kentucky, official seal." The board***, the arbitrators,*** and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the commissioner, all actions or proceedings against the board or a member in his official capacity, or against an ***arbitrator or*** administrative law judge or the commissioner in his official capacity shall be brought in the courts of Franklin County.

Section 57. KRS 342.245 is amended to read as follows:

All proceedings of the board***, arbitrators,*** and the administrative law judges shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim or proceeding considered, heard or passed upon by each ***arbitrator,*** administrative law judge and the board, with the award, finding or decisions made thereon.

Section 58. KRS 342.260 is amended to read as follows:

(1) The commissioner shall prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the ***arbitrators and*** administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.

(2) The commissioner shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The commissioner may adopt life tables published by the U.S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an ***arbitrator or*** administrative law judge shall apply to computations concerning that opinion, award, or settlement.

(3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any ***arbitrator or*** administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(4) The sheriff shall serve all subpoenas of the board***, arbitrators,*** and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any ***arbitrator or*** administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.

(5) The Circuit Court shall, on application of the board, any member thereof, or any ***arbitrator or*** administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Section 59. KRS 342.305 is amended to read as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the ***arbitrator or*** administrative law judge, or of an order or decision of the ***arbitrator,*** administrative law judge, or board, or of an award of the ***arbitrator or*** administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals shall be modified to conform to any decision of the ***arbitrator or*** administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Section 60. KRS 342.310 is amended to read as follows:

(1) If any ***arbitrator,*** administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorney fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.

(2) If any ***arbitrator,*** administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that a party has committed acts in violation of KRS 342.335(1) or (2), that party may be ordered to make restitution for any compensation paid as a result of the commission of such acts.

Section 61. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 62. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each ***arbitrator and*** administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the commissioner deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the commissioner to publish and distribute among employers and employees any general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

Section 63. KRS 342.700 is amended to read as follows:

(1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).

(2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an ***arbitrator or*** administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

(3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Section 64. KRS 342.710 is amended to read as follows:

(1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.

(2) The commissioner shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.

(3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. In all such instances, the ***arbitrator or*** administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The ***arbitrator or*** administrative law judge on his own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, the ***arbitrator or*** administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the ***arbitrator or*** administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

(4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.

(5) Refusal to accept rehabilitation pursuant to an order of an ***arbitrator or*** administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

(6) The commissioner shall cooperate on a reciprocal basis with the Department of Vocational Rehabilitation and the Department for Employment Services of the Kentucky Cabinet for Workforce Development. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Department of Vocational Rehabilitation or Department for Employment Services following the refusal by the employer or his insurance carrier to provide such services, the ***arbitrator or*** administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or his insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.

(7) Prior to an order from an ***arbitrator or*** administrative law judge, the provisions of this section shall not be mandatory.

Section 65. KRS 342.735 is amended to read as follows:

The commissioner shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The commissioner may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an ***arbitrator or*** administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the ***arbitrator or*** administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

Section 66. KRS 342.780 is amended to read as follows:

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the ***arbitrator or*** administrative law judge shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

Section 67. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

(1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and

(2) Has not made a deposit of security, indemnity, or bond acceptable to the commissioner to secure the payment of compensation liability; and

(3) Has failed to make payment of compensation according to the terms of that award,

the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the ***arbitrator or*** administrative law judge relative to the claim as certified by the commissioner and to state that there is due to plaintiff on account of the opinion, order, or award of the ***arbitrator or*** administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

Section 68. KRS 342.318 is amended to read as follows:

The provisions of KRS 342.316***(4)***[~~(3)~~] shall apply to employees' asbestos-related disease claims filed on or after July 15, 1986.

Section 69. KRS 342.329 is amended to read as follows:

(1) The commissioner shall establish ***a division of***[~~an~~] Ombudsman ***and Workers' Compensation Specialist Services***[~~program~~]. The functions of the ***division***[~~ombudsman~~] shall include:

(a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;

(b) Responding to inquiries and complaints relative to the workers' compensation program;

(c) Advising all parties of their rights and obligations under this chapter;[~~ and~~]

(d) ***Assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and***

(e) Performing other duties as required by the commissioner through administrative regulations promulgated by the commissioner.

(2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.

(3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.

(4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the ***division***[~~ombudsman program~~].

Section 70. KRS 393.082 is amended to read as follows:

(1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or commissioner's designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.

(3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.

(4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

(5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.

(6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.

(7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or commissioner's designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.

(8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the

event the establishment of the trust fund is challenged.

(9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency or employee, beyond that expressly set forth in a comprehensive distribution plan.

(10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.

(11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.

(12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by[~~subsection (1) of~~] KRS 342.320, as well as the approval of the commissioner or the commissioner's designee.

(13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

Section 71. KRS 342.155 is amended to read as follows:

Whenever the administrative law judge considers it expedient, any lump sum which is paid as provided in ***this chapter***[~~KRS 342.150 hereof~~] shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties and liabilities of the trustee shall be determined by the general laws of this state.

Section 72. KRS 342.1201 is amended to read as follows:

(1) The General Assembly finds and declares that the estimated projected unfunded liability of the workers' compensation special fund is one billion seven hundred million dollars ($1,700,000,000).

(2) The General Assembly finds and declares that approximately seventy-eight percent (78%) of the total liability of the special fund over a five (5) year period ending in July, 1987, is attributable to employers who are engaged in the severance or processing of coal.

(3) The General Assembly finds and declares that more than ninety-five percent (95%) of the total liability of the special fund for occupational disease is attributable to benefits awarded for coal workers' pneumoconiosis (black lung) claims to employees of employers engaged in the severance or processing of coal.

(4) The General Assembly further finds and declares that approximately thirty percent (30%) of the total liability of the special fund for traumatic injuries is attributable to benefits awarded to employees of employers who are engaged in the severance or processing of coal; and

(5) The General Assembly hereby finds and declares that the failure to satisfactorily fund the special fund liabilities or to make other satisfactory arrangements, and the corresponding unpredictability and inefficiency has imposed, and continues to impose, a substantial burden on employers of the Commonwealth whose assessments or taxes have heretofore been used to pay the special fund liabilities, and that if the burden on employers is allowed to continue unmitigated, there will be a resulting increase in unemployment and an out-migration of employers from the Commonwealth, and new employers will be discouraged from locating in the Commonwealth.

(6) Therefore, it is the intent of the General Assembly in imposing the additional assessment required in ***Section 34 of this Act***[~~paragraph (b) of subsection (1) of KRS 342.122~~] to more nearly equate the level of assessment to the level of liabilities of the special fund and thus, the additional burden of assessment must rest upon employers engaged in the severance or processing of coal, as defined in KRS 342.0011.

Section 73. The following KRS sections are repealed:

342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart -- Limit on special fund's liability for all other injury claims.

342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician -- Report -- Fees and expenses -- Decision of administrative law judge.

342.150 Lump-sum compensation -- When and how made.

342.352 Voluntary pilot programs for integrated management of employer's worker compensation and group health insurance claims -- Twenty-four hour coverage.

342.720 Burial expense.

Section 74. The General Assembly finds and declares that workers who incur injuries covered by KRS Chapter 342 are not assured that prescribed benefits will be promptly delivered, mechanisms designed to establish the long-term solvency of the special fund have failed to reduce its unfunded liability, and many of the Commonwealth's employers are placed at a competitive disadvantage due to the cost of securing workers' compensation insurance coverage. These circumstances threaten the vitality of the Commonwealth's economy and the jobs and well-being of its workforce. Whereas it is in the interest of all citizens that the provisions of this Act shall be implemented as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Motions, Petitions and Communications

Representative Stumbo moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Stumbo moved that the rules be suspended to introduce and act upon a Resolution. Agreed.

HR 4, by Representative Richards: A RESOLUTION adjourning in loving memory and honor of Vic Hellard, Jr.

Representative Stumbo moved the adoption of the following **HR 4**:

HR 4, A RESOLUTION adjourning in loving memory and honor of Vic Hellard, Jr.

We have lost our beloved friend Vic Hellard, Jr. Death has stolen him from our midst, but death for Vic is but a stepping stone. His honor and his reward await him across the living river. For those who remain and mourn his loss, take heart -- all that Vic Hellard was is not confined to a grave, but dwells above the Pennyrile, meanders down the Big Sandy, and roves with the wind across the breadth of the Commonwealth. He will never be lost as long as we remember.

WHEREAS, born August 16, 1939, to Victor Hellard, Sr. and Leona Tilghman Hellard, Vic Hellard, Jr. was struck down in the prime of his life on September 16, 1996, at the young age of 57; and

WHEREAS, the Woodford County native was an accomplished attorney, gifted raconteur, engaging writer, talented theatrical performer, gracious host and entertainer, consummate politician, and skilled administrator of the Legislative Research Commission from 1977 until his retirement in August of 1995; and

WHEREAS, Vic Hellard, Jr. was revered by his peers -- evidenced by being distinguished to lie in state in the Capitol Rotunda -- an honor that only eleven other dignitaries have received in the history of the Commonwealth; and

WHEREAS, perhaps Vic Hellard, Jr.'s greatest contribution to his fellow Kentuckians was his humble, dedicated career as the public servant who shepherded the legislature on its quest for independence and who guarded that independence with a zealous love; and

WHEREAS, a selfless humanitarian, Vic Hellard, Jr. quietly gave to the less fortunate in need -- he was a kind and loyal friend to many whom society forever paints faceless; and

WHEREAS, Vic Hellard, Jr. was a mentor to countless individuals who sought his sage counsel and who willingly gave their trust and respect to a rare man who could put his partisan and personal agenda aside for the benefit of the legislative institution; and

WHEREAS, a catalyst in the evolution of the General Assembly, Vic Hellard, Jr. was a diplomat -- a statesman whose acumen was legendary and who daily served the Commonwealth with courage, integrity, and dignity; and

WHEREAS, we loved Vic Hellard's boundless spirit because he brought out the best and the noble in each of us -- it is now our duty to share his thoughts and deeds with future generations; and

WHEREAS, it was but yesterday we met him and it was only yesterday we said good-bye -- yet Vic Hellard's style and flair and love for his fellow man and for his government shall envelop the hallowed halls of the Capitol forevermore;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The members of this august body, both individually and collectively, do hereby express their love for our departed friend and colleague, Vic Hellard, Jr. of Versailles, Kentucky.

Section 2. In our friend Vic Hellard -- our needs were answered and we posthumously declare him to be an outstanding native son and exemplary representative of the Commonwealth.

Section 3. When the House of Representatives of the General Assembly of the Commonwealth of Kentucky does adjourn this day, Monday, December 2, 1996, we do so in tribute and awe of Vic Hellard, Jr. He graced us with his presence only briefly, but his greatness lives forever in our hearts.

Section 4. A copy of this Resolution should be transmitted to Mrs. Ellen Hellard, Versailles, Kentucky.

There being no objection **HR 4** was adopted.

Representative Stumbo moved that a call of the roll be taken to show co-sponsors of **HR 4**. Agreed.

Roll call to show co-sponsors of **HR 4** is as follows:--Ackerson, Adams, Adkins, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, Buis, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Heleringer, Hogancamp, Horlander, House, Jenkins, Jensen, Jordan, Kerr, Lee, Lile, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Representative Stumbo moved that the rules be suspended to recommit a bill. Agreed.

Representative Stumbo moved that **HB 1** be recommited to the Committee on Labor and Industry. Agreed.

The following members filed requests to have their names added as co-sponsors to a Bill and a Resolution under the previously suspended rules: **HR 4**, Representative Reinhardt; **HB 1**, Representative Nunn.

Recess

Representative Stumbo moved that the House recess until 6:00 p.m. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Representative Stumbo moved that the rules be suspended to grant floor privileges to the Constitutional Officers and invited guests. Agreed.

Representative Stumbo moved that the House and Senate resolve into Joint Session. Agreed.

Joint Session

The Chief Doorkeeper announced the arrival of the President of the Senate.

The President of the Senate assumed the Chair and called the Joint Session to order.

Prayer by Dr. John Calloway, Extra-Parish, member of Louisville Presbytery, Frankfort.

Representative Stumbo moved to dispense with a call of the roll. Agreed.

The Chief Doorkeeper announced the arrival of the Governor of the Commonwealth of Kentucky, escorted by the previously appointed committee.

Governor Paul E. Patton addressed the Joint Session of the General Assembly as follows:

Speech by Governor Paul E. Patton

Joint Session of the General Assembly

Special Session - December 2, 1996

Speaker Richards, President Rose and members of the General Assembly, Justice Stephens and members of the Judiciary, Governor Henry and other members of the Executive, my fellow Kentuckians. I can report to you tonight that in general, the condition of the Commonwealth is good. In State Government, revenues are above estimates, Empower Kentucky is going well, and we're making progress on welfare reform.

Statewide, our unemployment is at 4.6%, more Kentuckians are working than ever before, manufacturing jobs are up - even as the nation's manufacturing jobs decline, personal income in Kentucky is growing faster than in 42 other states, and companies are expanding or relocating here on a regular basis.

Yes, for many businesses, Kentucky's a very good place to be. We have a central location, a good arterial transportation system, low energy costs, low business taxes, strong incentive programs, an aggressive and effective recruitment program, and a workforce with a good work ethic, 10% more productive than the national average.

We have a lot of advantages, a lot of reasons for businesses to expand in Kentucky.

As good as all this sounds, we still have problems. Our two big problems, which still keep us from growing as fast as we can, are education and workers' compensation. If we improve education and cut the cost of workers' compensation, we'll grow faster than we are now, and if we're going to bring economic opportunity and quality of life in Kentucky up to the national average in 20 years, which is my goal, we must grow faster than we are now, much faster. In time, we must address higher education. The time to address workers' compensation is at hand.

We've been committed for many years to having a mandatory program to compensate, as best we can, a worker injured on the job, for wages they lose as a result of the injury, and to pay the cost of medical treatment they need because of the injury. That's the purpose of a workers' compensation program, plain and simple. Workers' compensation isn't meant to be an unemployment program, or a retirement program, or a social welfare program.

Worker's compensation isn't an entitlement program for attorneys, or health care providers, or rehabilitation services companies.

These very worthwhile and honorable professions have, and will continue to be needed, to provide the services used by injured workers to recover from injures, and to receive just compensation for lost earning capacity. But workers' compensation is intended to serve injured workers, not service providers.

The second concern of any workers' compensation program must be its cost to employers. And here again, the purpose of maintaining a cost-efficient program, is to protect the worker, their jobs, and their wages. Because, in the end, it's the workers who ultimately pay the cost of any workers' compensation program. They pay with lower wages, or in some cases, with lost jobs.

The cost of compensation coverage is a cost of labor, pure and simple. Compensation costs, added to social security, unemployment insurance, health care coverage, retirement programs, and wages constitute the total cost of labor for any employer.

When the cost of labor gets too high, employers leave Kentucky, or don't start new businesses here.

When an employer has to cut costs to meet competition, they cut the cost of labor. the easiest way to cut the cost of labor, is to cut wages.

Yes, the employer writes the check for workers' compensation insurance, but in the end, the worker pays the bill.

Yes, its the employers who're screaming about the high costs, because high costs mean lost sales, which means lost profits; but lost sales also mean lost production, which means lost jobs.

So, as we attempt to do what's fair and just for the injured worker, we must also be concerned about the cost of the program to employers.

Last spring, I asked the Workers' Compensation Advisory Council, to investigate costs in Kentucky, as compared to other states with which we compete for jobs. I and my staff have also conducted extensive research. Our efforts were an attempt to answer the questions: Does the Kentucky workers' compensation program cost more than similar programs in competing states? Does it cost more than it should compared to the benefits paid to and for injured workers? I've concluded that the answer to both of these questions is yes.

Our workers' compensation system reduces our competitive advantage and if we don't do something now, it'll get worse.

We've tried to control the cost of workers' compensation in the past, including the passage of H.B. 928 in 1994. That was a step in the right direction. It reduced the cost of the program in some ways, the most significant of which were the tier down of lifetime benefits, the elimination of RIB claims for working miners, and the reduction of medical costs.

But a little noticed and probably unanticipated effect of H.B. 928 was the tremendous increase in premium costs which would occur because of the elimination of the assigned risk pool. The assigned risk pool held premium down in Kentucky even while the actual cost of the program was going up. In 1994, insurance companies were losing money in Kentucky, big money, and so, they began to refuse to renew policies. Cheap insurance isn't worth must if no one will sell it to you. Insurance companies leaving Kentucky was the crisis that caused us to pass H.B. 928.

Even though insurance companies were losing money in 1994, employers were screaming about high costs even then. Now, even though some employers have had reductions in their compensation costs, most employers are screaming even louder.

We've documented these high and increasing costs in this publication, "The Kentucky Workers' Compensation Program: An assessment," which I've sent to all the members of the General Assembly. I hope all of you've studied it carefully. It's the basis on which I call for comprehensive reform of our program.

The most significant and reliable data in this book is on page 76 and is reproduced on this transparency. These data show very clearly the dramatic jump in the total system cost of $200 million in the first year after the passage of H.B. 928. Unfortunately, costs continued to rise in the second year after the passage, by about $100 million. The total cost to employers in Fiscal Year 1996 was about $1.1 billion, four times more than the corporate income tax in Kentucky. The increase in compensation costs in the past two years has been the same as doubling the corporate income tax on Kentucky businesses. A measure like that wouldn't get one vote in the Kentucky General Assembly but that's exactly what's happened in the past two years.

As bad as the situation is now, it'll get worse if we don't act now.

The expiration of the freeze on the state average weekly wage, the recent increase in medical reimbursement rates, and the action of the Workers' Compensation Funding Commission to meet the mandates of the 1987 Workers' Compensation Reform Act to fully fund all liability of the Special Fund by the year 2018, will all combine to produce dramatic increases in premiums next year if we don't do something. The general cost increase of 10.2% will precipitate additional cries from non-coal businesses, but the increase of 30.4% for coal will have a rather silencing effect, because the coal industry will just fade away.

With costs already 50% higher than our primary competitor, West Virginia, and production dropping, we won't have to worry about coal in Kentucky much longer. Within ten years, it'll only be a shadow of its former self. But our problems in Kentucky will begin to accelerate. Laid-off coal miners will get huge awards from the Special Fund but there won't be many coal companies left to pay into the Special Fund. Other employers will have to pay the bill. Costs for coal companies will go up even further, more jobs will be lost. More miners will file for compensation. It'll be a vicious circle.

State tax collections will go down, the social costs of caring for people thrown out of work in coal and related industries will go up. Kentucky could be thrown into recession. Doing nothing isn't an option.

The basic problem in coal is an overly generous Black Lung program, as compared to other coal-producing states. Coal miners are the only class of Kentucky workers who can get major awards, up to a quarter of a million dollars, without proving they have any measurable disability. This situation isn't fair and it must stop.

Much has been said about what I propose to do to coal miners. What I intend to do is save their jobs. I believe that's what most of them want. It's hard to get a job anywhere that pays as good as coal mining and yet many people have already lost their jobs in the mines because of high compensation costs, and many more have had their wages cut.

The only substantial change I propose in the Kentucky Black Lung Program is for a miner to show that they have an actual physical impairment, just like every other worker in Kentucky must demonstrate, in order to draw compensation, and have that impairment determined by a neutral physician. Miners will still be a preferred class of worker.

Miners will receive a higher award than any other worker with the same impairment. There are some positives for miners in my proposal. The miner won't have to quit his job to find out if he is eligible for a compensation. The weekly benefit for the retraining program will be twice what it is now and they can get a relocation allowance. The miner who really has Black Lung will be better off. And no other worker or company will have to pay for it. My proposal completely removes all subsidies for coal. But it allows coal to survive.

This reform is what we must have for Kentucky, for the coal fields of Kentucky, for Eastern Kentucky. I spent ten years of my life serving the people of Eastern Kentucky and as Governor I intend to continue. No one can honestly question my concern for, or devotion to, the people of the mountains. One of my goals is to be remembered as the Governor who finally lifted Eastern Kentucky out of the state of poverty which has been its historic legacy. This is one step which must be taken to start that process. I ask my friends representing the mountains to look at this situation realistically and do what's right for the future of the region, for the children of the mountains, for the miners of Kentucky.

Give our people the option to stay in our homeland, preserve our unique culture, and still have an opportunity for economic parity. Do it for our children.

And so I've called you here to Frankfort to act, and act quickly. As a starting point, I've drafted a proposal, which I ask you to consider. I'm confident it'll improve the situation.

This proposal will eliminate the major cost increases scheduled to go into effect next year, and will make significant reductions in premiums from current levels. This proposal will end all subsidies for coal and, perhaps as important as anything, this proposal will stop the accumulation of billions of dollars of unfunded liability and will absolutely payoff the Special Fund by the year 2018.

And this proposal will help the truly injured worker, doubling payments to the more seriously injured. That's been my commitment from day one and this proposal achieves that goal. For instance, the loss of a finger will almost double. For the loss of a thumb, the award will be increased about 1000 percent.

Death benefits will be increased by $21,000 in most cases. This is a proposal to improve the protection of seriously injured workers.

No existing award to any injured worker will be reduced. Let me repeat that again so that those people who're erroneously telling people that I'm trying to take their award away from them will quit scaring old people who may not know differently; no existing award to any injured worker will be reduced!

Now, it's also fair to say that people who can't prove any disability won't get an ward under our system and people won't get retirement benefits from workers' compensation but workers' compensation was never meant to do these things.

The emphasis of our proposal is to reduce overhead, legal costs and unnecessary medical costs, and eliminate awards to people who don't actually have a disabling injury or are trying to defraud the system.

There's nothing in our plan which denies a worker the right to use an attorney at any stage of the process. However, the need to have an attorney is greatly reduced. In most cases, the employee can avoid all attorney fees, increasing the amount of money they actually get to help support their family by as much as 20%.

The worker also has no need to pay for extra medical examinations or court costs to prove their claim, again increasing their take home award.

But I repeat again, if the employee wants to spend the extra money to do these things, they're free to do so. The choice is theirs.

We believe that most employees can get their cases resolved in 90 days instead of the 9 to 18 months that the present system takes. And we've built in safeguards for the employee who is unfairly deprived of temporary benefits while they're recovering from their injuries. This system will be more fair; employees with similar injuries will receive similar awards. The award won't be dependent on getting the best lawyer or most liberal doctor or most sympathetic judge. The public will see that it'll be a lot harder to cheat the system. We'll make sure self-insured companies establish guarantee funds so there won't be any more Southeast Coals where injured workers lose benefits because a company goes bankrupt. As important as all of these things are, it's also important to understand that our existing workers' jobs will be more secure.

This is comprehensive reform, a fundamental change in the way we operate our workers' compensation system. The principle used in this system isn't new. It's based on principles which have already been adopted by several states to bring their runaway workers' compensation programs under control. But this proposal isn't copied from any other state. This is a unique Kentucky solution to a unique Kentucky problem.

This proposal is the product of months of research and work. It's had input from experts in the private sector and from state government, and from representatives of labor and business. I want to pay special tribute to the members of my staff who've worked long and hard, late at night and on weekends to produce this proposal. Thank you, you've served the people of Kentucky well. An equal tribute goes to the LRC staff who showed strong devotion to this task. Thank you for your service, above and beyond the call of duty.

We don't claim this draft is perfect. No such change can be refined to its maximum potential until it's exposed to free and open public debate through the legislative process.

So, tonight I turn the proposal over to you, the General Assembly. I'll continue to be involved to make sure you fully understand the proposal and what it's intended to do. But the ultimate decision is up to you, you represent the people, all the people.

I believe this is one of the most important issues that I'll be addressing during my tenure as Governor. I believe this is one of the fundamental issues we must address if we're to move Kentucky successfully into the 21st century. And I believe in you. I know you care just as much about the Kentucky worker as I do. I believe you're just as wise as I am. I believe you'll work just as hard as I have to bring us this far. I trust the legislative process.

I want to thank the leaders of the General Assembly, Democrat and Republican, for your steadfast support for substantial change. I respect your withholding your specific endorsement until you've seen the final product. If this proposal passes, it'll be with bipartisan support. I hope this can be the beginning of a more cooperative era of government in Kentucky. An era where politics can be reserved for elections and policy can be developed based on what's good for the people, not what'll play well in a 30 second commercial.

Today we face a situation not unlike the situation we faced when considering the Kentucky Education Reform Act. Major change, outcome somewhat uncertain, a time for courage, a time for statesmanship. KERA was, in my judgment, this legislature's finest hour.

I remember vividly Representative Greg Stumbo's eloquent charge to the House of Representatives. At that time, Representative Stumbo reminded us of what Harry Truman said, "that you have to live with your conscience a lot longer than you live with your constituents." That kind of courage and vision from a mountain legislator made me proud of my heritage.

We've now come to another milestone in our history, where leaders have to lead. This is another time when leaders like Roger Noe need to do what's right, regardless of the political consequences. This chance will not come our way again.

So, as we approach this task during the next two weeks, let's do it in the spirit of bipartisanship, of trust, of mutual respect, and with the understanding that we hold the future of hundreds of thousands of Kentucky workers in our hands.

Only under those conditions can we fulfill the sacred trust given to us by the people of this great Commonwealth. They are a great people, too often betrayed by their leaders, too often dominated by the special interests, too often left behind because of the lack of vision. Let us not fail them.

Representative Stumbo moved to dissolve the Joint Session. Agreed.

Speaker Richards resumed the Chair.

Announcements

The following meetings were announced:

Minority Caucus, Room 111, upon recess.

Labor and Industry, Room 129, 2:30 p.m. or upon Recess.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Tuesday, December 3, 1996.

On the roll call the vote was **Yeas 73**--Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Bruce, De. Butler, Dw. Butler, Cave, L. Clark, P. Clark, J. Clarke, Collins, Colter, Curd, Cyrus, Damron, DeWeese, Ford, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Hogancamp, House, Jenkins, Jensen, Jordan, Kerr, Lee, Lindsay, Long, Lovell, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Nunn, Palumbo, Rapier, Rasche, Richards, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Turner, Vincent, Walton, Wayne, Worthington.

Nays 4--Crall, Deskins, Heleringer, Lile.

The motion to adjourn was adopted.

TUESDAY, DECEMBER 3, 1996

SECOND LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Jay Ayers, South Frankfort Presbyterian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Brandstetter, Hampton, Hatcher, Mason and Reinhardt.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 2, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Introduction of Bills

HB 3, by Representative Deskins: AN ACT relating to workers' compensation.

HB 4, by Representative Deskins: AN ACT relating to workers' compensation insurance.

HB 5, by Representative Rapier: AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

Posting of Bills and Resolutions for Consideration

The Clerk announced that the following Bill has been posted for Committee consideration:

Appropriations and Revenue: **HB 2**

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended to grant floor privileges to newly elected members who will assume office in January 1997. Agreed.

Representative Stumbo moved that the rules be suspended for introduction of Bills and Resolutions and to introduce guests. Agreed.

Introduction of Bills (Cont.)

HB 6, by Representative Jensen: AN ACT relating to workers' compensation.

Recess

Representative Stumbo moved that the House recess to allow a Committee on Committees meeting in the Speaker's Office. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Reference of Bills and Resolutions

The Clerk reported that the Committee on Committees has referred the following Bills:

Appropriations and Revenue: **HB 5**

Labor and Industry: **HB 3, HB 4, HB 6**

Announcements

The following meetings were announced:

Minority Caucus, Room 111, upon adjournment.

Judiciary, Room 125, December 5th, upon Senate adjournment.

Labor and Industry, upon adjournment.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., Wednesday, December 4, 1996.

On the roll call the vote was **Yeas 80**--Adams, Adkins, Allen, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Bruce, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hogancamp, House, Jenkins, Jensen, Jordan, Kerr, Lee, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mello, Moberly, Morris, Murgatroyd, Napier, Nelson, Newsome, Noland, Northup, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Nays 5--Buis, Crall, Lile, Mullinix, Nunn.

The motion to adjourn was adopted.

WEDNESDAY, DECEMBER 4, 1996

THIRD LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Mark Hopper, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Allen, Fox, Friend, and Jensen.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 3, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the rules be suspended to waive the one day posting requirement on **HB 5** and to allow the Committee on Appropriations and Revenue to meet upon recess. Agreed.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Appropriations and Revenue meeting in the Speaker's Office. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report of Committees

The Committee on Appropriations and Revenue reported **HB 5** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 5, AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related ***traumatic event or series of traumatic events, including cumulative trauma***[~~harmful change in the human organism~~], arising out of and in the course of employment ***which is the substantial causative factor producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process and***[~~, including damage to or loss of a prosthetic appliance, but~~] does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease ***and damage to a prosthetic appliance***, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this section shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the ***substantial causative factor***[~~proximate cause~~]. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure" as used in KRS 342.316 shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.

(5) "Death" means death resulting from an injury or occupational disease.

(6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this

chapter and includes a self-insurer.

(7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.

(8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

(9) "Commissioner" means the commissioner of the Department of Workers' Claims.

(10) "Board" means the Workers' Compensation Board.

(11) ***(a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from the effects of an injury or has not reached a level of improvement that would permit a return to employment;***

(b) "Temporary partial disability" means the condition of an employee who, due to the effects of an injury, returns to work pursuant to an employer program to accommodate the employee's impairment with work encompassing either lesser exertional requirements or shorter working days and lower earnings than the employee earned prior to the injury;

(c) "Permanent partial disability" means the condition of an employee who, due to the effects of an injury, has a permanent impairment rating pursuant to the latest edition of the "Guide to the Evaluation of Functional Impairment" of the American Medical Association but retains the ability to work; and

(d) "Permanent total disability" means the complete and permanent inability to work as a result of a work-related injury or injuries under this chapter, except that total disability shall be irrebuttably presumed to exist for:

1. Total and permanent loss of sight in both eyes;

2. Loss of both feet at or above the ankle;

3. Loss of both hands at or above the wrist;

4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;

5. An injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;

6. An injury to the skull resulting in incurable insanity or imbecility; or

7. Total loss of hearing{~~"Disability" means a decrease of wage earning capacity due to injury or loss of ability to compete to obtain the kind of work the employee is customarily able to do, in the area where he lives, taking into consideration his age, occupation, education, effect upon employee's general health of continuing in the kind of work he is customarily able to do, and impairment or disfigurement~~}.

(12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

(13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.

(14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.

(15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

(16) "Person" means any individual, partnership, firm, association, trust, joint venture, corporation, or legal representative thereof.

(17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from others than the employer as evidenced by the employee's federal and state tax returns.

(18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.

(19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.

(20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.

(21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall

be regarded as an alien.

(22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the ***Kentucky*** Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.

(23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.

(b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

(24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. ***For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.***

(25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. ***For policies covering leased employees as defined in Section 36 of this Act, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in Section 36 of this Act for each leased employee for that portion of the payroll pertaining to the leased employee.***

(b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for***

insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).

(28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:

(a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

(b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.

(c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by ***1.25***~~[1.12]~~ and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.

(d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.

(e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).

(f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

(g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection[~~, except that the value for each such employer's claims shall be the total of the indemnity benefits paid by the employer, adjusted to current benefit levels, plus the medical benefits paid~~].

(h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents ($0.30) per one hundred dollars ($100) of the employer's most recent annualized payroll for employees covered by this chapter.

(29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

(30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.

(32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.

(33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods and are not dependent upon the perception of the patient.

(34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.

Section 2. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. ***The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled.*** The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.

(3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter shall include the following features in

plans for workers' compensation medical care:

(a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;

(b) The employee shall be allowed choice of provider within the plan;

(c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

(d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and

(g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.

(h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.

(i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

(5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

(6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.

(7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge ***or arbitrator*** by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge ***or arbitrator*** may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, ***arbitrator,*** or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

Section 3. KRS 342.120 is amended to read as follows:

(1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with

the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) ***The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred after the effective date of this Act.***[~~A claimant may name the special fund as a party in the original application for benefits, or either party shall as soon as practicable, by motion, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if either or both of the following appears:~~

~~(a) The employee is disabled, whether from a compensable injury, occupational disease, pre-existing disease, or otherwise, and has received a subsequent compensable injury by accident, or has developed an occupational disease;~~

~~(b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.~~

~~(3) All motions to join the special fund shall include proper allegations demonstrating the basis for joinder and certification of the fact that a copy of the motion and the entire case file has been forwarded to the special fund at the cost of the movant.~~

~~(4) Failure to move for joinder of the special fund within the time limit prescribed by this section, without a showing of good cause, shall bar any recovery against the special fund.~~

~~(5) When the special fund has been made a party, the administrative law judge may direct the procedures provided in KRS 342.121.~~

~~(6) If it is found that the employee is a person mentioned in paragraphs (a) or (b) of subsection (2) of this section and a subsequent compensable injury or occupational disease has resulted in additional permanent disability so that the degree of disability caused by the combined disabilities is greater than that which would have resulted from the subsequent injury or occupational disease alone, and the employee is entitled to receive compensation on the basis of the combined disabilities, the employer shall be liable for the payment of all income benefits until the benefits paid have reached a percentage of the full income benefits awarded by the administrative law judge which is equal to the percentage of disability which would have resulted from the latter injury or occupational disease had there been no pre-existing disability or dormant, but aroused disease or condition.~~

~~(7) The remaining compensation for which such resulting condition would entitle the employee, including any compensation for disability resulting from a dormant disease or condition aroused into disabling reality by the injury or occupational disease, but excluding all compensation which the provisions of this chapter would have afforded on account of prior disabling disease or injury had it been compensated thereunder, shall be paid out of the special fund provided for in KRS 342.122. Such remaining compensation shall be paid directly to the employee under such regulations as the secretary of finance and administration may provide for such purpose.~~

~~(8) In making the computation for the apportionment of benefits under this section, the administrative law judge shall determine the amount of the employee's weekly income benefits and apportion the award commencing with the employer and special fund as follows:~~

~~(a) For benefits awarded under this chapter, the portions shall be based on the number of weeks stated therein;~~]

(3) [~~(b) In instances~~]Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, ***with the period of payment beginning on the date settlement was approved by an administrative law judge or arbitrator***[~~unless otherwise agreed by all parties~~]. ***This provision is remedial and shall apply to all pending and future claims.***

Section 4. KRS 342.122 is amended to read as follows:

[~~(1) (a) For the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Division of Special Fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and, financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth enacted by the General Assembly, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4) and there is hereby imposed on and after January 1, 1990, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional special fund assessment at the rate of forty-seven percent (47%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1990, an additional assessment at the rate of forty-seven percent (47%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(c) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on such premiums.~~

~~(2) Each November 15, the funding commission shall determine the amount of premiums reported and assessments imposed in subsection (1) of this section for the past period as appropriate. If the funding commission determines that the special fund assessment rate imposed to produce seventy million dollars ($70,000,000) or the additional special fund assessment rate imposed to produce forty million dollars ($40,000,000) are likely to produce more or less than seventy million dollars ($70,000,000) or forty million dollars ($40,000,000) during the next annual period, the commission shall, based upon such determination, calculate such adjustments to each rate as shall be necessary to provide seventy million dollars ($70,000,000) and forty million dollars ($40,000,000) respectively, during the next annual period beginning on January 1 of each year. On or before December 1 of each year, the commission shall notify each insurance company writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the adjusted rates which shall become effective on January 1, of each year, unless modified by the General Assembly.~~

~~(3) (a) Notwithstanding the assessment rates in subsection (1) of this section or the special fund assessment amounts specified in subsection (2) of this section, for calendar year 1995, the funding commission shall impose a special fund assessment rate necessary to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(b) For calendar year 1996 the funding commission shall impose a special fund assessment rate necessary to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(c) 1. The assessment rate calculated to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) under paragraph (a) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (a) of this subsection, which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premium, as defined in KRS 342.0011 of every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(d) 1. The assessment rate calculated to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) under paragraph (b) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (b) of this subsection which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premiums, as defined in KRS 342.0011 by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(e) On or before December 1 of 1994 and 1995, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the special fund assessment rates established in this subsection which shall become effective on January 1, 1995, and January 1, 1996, respectively, unless modified by the General Assembly. The payment schedules and~~

~~other matters relating to the payment of the special fund assessments required pursuant to this section shall apply to the assessment rates and amounts required under this subsection.~~]

(1) ***(a)***[~~(f)~~] For calendar year 1997 and for each calendar year thereafter, ***for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk***[~~the assessment rates and amounts contained in the provisions of subsections (1) and (2) of this section shall apply~~].

(b) ***The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.***

(c) ***In addition to the assessment imposed in paragraphs (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars ($19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars ($19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars ($4,750,000).***

(d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(e) ***The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.***

(2)[~~(4)~~] These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. ***Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service.*** Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(3)[~~(5)~~] The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

(4)[~~(6)~~] A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(5)[~~(7)~~] The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(6)[~~(8)~~] Each self-insured employer, group self-insurer or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(7)[~~(9)~~] The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(8)[~~(10)~~] The fund heretofore designated as the subsequent claim fund is abolished and there is substituted therefor the special fund as set out by this section and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

[~~(11) Notwithstanding any other provision of this section or this chapter, or the Kentucky Revised Statutes, generally, the assessment rates for the special fund, as determined by this section, which were in force and effect on January 1, 1990, shall continue in force and effect until December 1, 1991, and the total amount of funds collected pursuant to the assessment rates shall not be limited to the provisions of this section.~~]

(9)[~~(12)~~] Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received after December 31, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 5. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386***, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities***;

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in ***this chapter***[~~KRS 342.122~~];

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in ***this chapter***[~~KRS 342.122~~]; and

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

(c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

(d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

(e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

(f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

(5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 6. KRS 342.125 is amended to read as follows:

(1) ***Upon motion by any party or upon an arbitrator's or administrative law judge's own motion, an arbitrator or administrative law judge may reopen and review any award or order on any of the following grounds:***

(a) Fraud;

(b) Newly discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

(2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(3) Except for reopening solely for determination of the compensability of medical expenses, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party.

(4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the arbitrator or administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The arbitrator or administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the arbitrator or administrative law judge[~~In claims where an award or order is entered pursuant to KRS 342.730(1)(a) or (1)(b) and upon its own motion or upon the application of any party and a showing of change of occupational disability, mistake or fraud, or newly discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. In claims where an award or order is entered pursuant to KRS 342.730(1)(c) or (d) and upon its own motion or upon the application of any party and a showing of change of medical condition, mistake, or fraud, or newly discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or the administrative law judge may change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. Any final award increasing or diminishing benefits shall require a showing of a change in occupational disability. Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder. The employer shall not suspend the payment of benefits~~

~~during the pendency of any reopening procedures~~].

(5)[~~(2)~~] (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis ***and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease***, the ***arbitrator or*** administrative law judge may review an award ***or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732***[~~of a retraining incentive benefit because of the diagnosis, and upon a finding of respiratory impairment due to that pneumoconiosis shall make an award for benefits as provided in KRS 342.732. Such a reopening may also occur upon a showing of progression of respiratory impairment in a claim for which benefits were previously awarded under the provisions of KRS 342.732~~]. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings. ***No party may file a motion to reopen within two (2) years of the original award or order granting or denying benefits or within two (2) years of any previous motion to reopen and no claim may be reopened more than four (4) years following the original award or order granting or denying benefits.***

(b) Benefits awarded as a result of a review under this subsection shall be reduced[~~ by the amount of retraining incentive benefits previously awarded and, if applicable, also~~] by the amount of ***retraining incentive benefits or*** income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.

(6)[~~(3)~~] In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.

(7)[~~(4)~~] Where an agreement has become an award by approval of the ***arbitrator or*** administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the ***arbitrator or the*** administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

(8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to the effective date of this Act may be reopened within four (4) years of the award or order or within one (1) year of the effective date of this Act, whichever is later.

Section 7. KRS 342.213 is amended to read as follows:

(1) The Governor shall make all appointments to the board, appoint the administrative law judges, ***arbitrators,*** and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him by the Workers' Compensation Nominating Commission.

(2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:

(a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.

(b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.

3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

(c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.

(d) The members shall annually select a chairman of the nominating commission.

(e) Notwithstanding the provisions of subsection (2) of this section at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this paragraph the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.

(3) The commissioner shall monitor the workload of the administrative law judges and arbitrators and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred and twenty (120) days prior to the expiration of the terms of the administrative law judges and arbitrators, and when a vacancy occurs under other circumstances, the commissioner shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the commissioner.

(4) (a) The Workers' Compensation Nominating Commission shall consult with the commissioner, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of administrative law judges and arbitrators. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge or arbitrator, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the commissioner of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the commissioner's certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge or arbitrator shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge and as an arbitrator.

(b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.

[~~(3) The Governor shall appoint the administrative law judges in accordance with the provisions of KRS 342.230 from a list of names submitted by the Workers' Compensation Nominating Commission. The list shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.230. The administrative law judges shall be subject to Senate confirmation in accordance with KRS 11.160.~~]

(5)[~~(4)~~] The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.

(6)[~~(5)~~] (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than ***sixty (60)***[~~ninety (90)~~] days after a vacancy occurs.

(b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.

(7)[~~(6)~~] The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars ($100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

Section 8. KRS 342.215 is amended to read as follows:

(1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.

(2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.

(3) Each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who~~[has resigned or]~~ has been removed from his position prior to the expiration of his term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) Members of the Workers' Compensation Board***, arbitrators,*** and the administrative law judges shall be members of the Kentucky Employees Retirement System.

Section 9. KRS 342.228 is amended to read as follows:

(1) The Department of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department shall be administered by a commissioner appointed by the Governor. The Governor shall select the commissioner from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.

(2) The commissioner shall~~[be an attorney and shall]~~ have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

Section 10. KRS 342.230 is amended to read as follows:

(1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, ***arbitrators,*** administrative law judges, and board members, shall be members of the classified service.

(2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges ***and arbitrators*** on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges***, arbitrators,*** and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board***,***~~[and]~~ the administrative law judges***, and arbitrators***; annually report the activities of the board***,***~~[and]~~ administrative law judges***, and arbitrators*** to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.

(3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than sixteen (16) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, ***and***~~[or]~~ extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge.~~[The Governor shall appoint the administrative law judges from a list of three (3) names for each administrative law judge position submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213 and for this purpose only, a member of the Workers' Compensation Board shall serve as an ex officio member of the nominating commission.]~~ Each administrative law judge may be employed for additional terms~~[of four (4) years]~~ with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case. ***To carry out the intent of this chapter and to implement its provisions, the commissioner shall have the authority to assign the duties of an arbitrator to an administrative law judge who shall work in that capacity as deemed necessary by the commissioner.***

(4) To ensure that the administrative law judges ***and arbitrators*** perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.

(5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge ***or arbitrator***. A member of the board or an administrative law judge ***or an arbitrator*** may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge***, an arbitrator,*** or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.

(6) Any vacancy in the term of an administrative law judge ***or an arbitrator***, which occurs prior to the expiration of the term, shall be filled ***if necessary*** by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.

(7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end***, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end***. On January 1, 1998, the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

(b) Effective at 12 midnight, December 31, ***1999***[~~1995~~], the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, ***2000***[~~1996~~], the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

[~~(c) On January 1, 1996, and January 1, 1998, as provided in paragraphs (a) and (b) of this subsection, and every fourth year thereafter, administrative law judges shall be appointed by the Governor for four (4) year terms and confirmed by the Senate in accordance with KRS 11.160. Confirmation hearings for administrative law judges shall be completed by the end of the regular session every four (4) years thereafter beginning with the 1996 Regular Session. Vacancies shall be filled in accordance with subsection (6) of this section.~~]

(8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those ***of other***[~~set forth in this section for~~] administrative law judges[~~, and to be subject to removal for the same reasons~~]. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, ***and*** providing educational opportunities for the administrative law judges[~~, and supervising the work of the employees of the Department of Workers' Claims who provide staff support for the administrative law judges~~]. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional ***three***[~~one~~] thousand dollars ***($3,000)***[~~($1,000)~~] per year. ***At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter.*** The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

(9) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years except as set forth in subsection (11) of this section, not more than eight (8) arbitrators, each of whom shall have extensive knowledge in workers' compensation law and shall be paid the same salary as a District Judge. Each arbitrator may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an arbitrator, shall provide the name of the individual he intends to appoint to the position to the chairman of the Senate Economic Development and Labor Committee. The arbitrators shall conduct benefit review conferences, shall supervise the presentation of evidence, and shall render final decisions, orders, and awards. Arbitrators may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented as will expedite the preparation of the case.

(10) One (1) of the arbitrators appointed pursuant to this section shall be appointed chief arbitrator and in addition to the duties otherwise assigned arbitrators shall assist the commissioner in the scheduling of the activities of the arbitrators and in the supervision and training of arbitrators. The chief arbitrator shall be paid the same rate as the arbitrators plus an additional two thousand ($2,000) dollars per year. At any time, the commissioner may replace the chief arbitrator with one (1) of the other arbitrators at which time the former chief arbitrator shall resume the duties assigned to the other arbitrators pursuant to this chapter.

(11) (a) The terms of four (4) arbitrators appointed pursuant to this section shall end at 12 midnight, December 31, 1997. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

(b) The terms of four (4) arbitrators appointed pursuant to this section shall end at 12 midnight, December 31, 1999. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

Section 11. KRS 342.265 is amended to read as follows:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement ***signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an arbitrator or administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the arbitrator or administrative law judge. Upon claims settled after the effective date of this Act, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the special fund mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.***

(2) Settlement agreements concluded after March 31, 1997, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than ten dollars ($10) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.

(3) Upon lump sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after the effective date of this Act, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 1998, the commissioner shall fix the discount rate to be utilized in the succeeding year based upon the interest rate paid upon ten (10) year United States Treasury Notes as of July 1 of the preceding year.

(4) If the parties have previously filed an agreement which has been approved by the administrative law judge or arbitrator, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay[~~shall be filed with the administrative law judge, and, if approved by him, shall be enforceable as provided in KRS 342.305. In all cases where all parties have not joined in the settlement agreement, the administrative law judge shall not approve the agreement unless the agreement certifies that the party not participating in the settlement has received a copy of the settlement agreement at least ten (10) days prior to submission of the agreement for approval. Nothing herein shall prevent the voluntary payment of compensation in the amounts and for the periods prescribed in this chapter without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with the administrative law judge and approved by the administrative law judge in accordance with this section. No limitations of time shall begin to run until the date upon which the agreement is filed with and approved by the administrative law judge~~].

Section 12. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application ***for resolution of claim***[~~to the commissioner for a hearing in regard to the matter at issue and for a ruling thereon~~]. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made.

(2) ***Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an arbitrator for benefit review. The arbitrator shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim***[~~Except with respect to uncontested claims for retraining incentive benefits by reason of occupational pneumoconiosis related to exposure to coal dust, or for disability or death by reason of occupational diseases, within thirty (30) days after the application has been received the commissioner shall set the date for a prehearing conference, to be held as soon as practicable in view of the matter involved, and shall notify the parties at issue of the time and place of the prehearing~~

~~conference~~].

(3) ***(a) The arbitrator shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, or submit medical reports and other information, or refer the employee for medical evaluation.***

(b) If an arbitrator determines in his discretion that a pending claim presents factual issues best resolved through hearing before an administrative law judge, the arbitrator may enter an order transferring the claim to an administrative law judge for further proceedings~~[The prehearing conference shall be at or convenient to the place where the employee resides, provided that such prehearing conference shall be held within the boundaries of the Commonwealth. At the prehearing conference, an administrative law judge shall confer informally with the parties at issue and their counsel, if any, for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposal of the case. If agreement upon any matter is reached, the administrative law judge shall write a memorandum setting forth the matters agreed upon. The administrative law judge and all parties shall sign the memorandum, and the administrative law judge shall file it with the commissioner. Once filed, the memorandum shall become a part of the record~~].

(4) ***Except where compelling circumstances justify delay and except as provided in subsection (3)(b) of this section, the arbitrator shall render a written determination upon all matters at issue within ninety (90) days of the assignment of the claim. Through written order, the arbitrator may grant or deny any benefit afforded by this chapter, including interlocutory relief***~~[If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive~~].

(5) ***Unless timely appeal is filed as set forth in KRS 342.275, the written determination of the arbitrator shall be a final order enforceable under the provisions of KRS 342.305***~~[An application for adjustment of claim shall be held in abeyance by the administrative law judge during any period voluntary payments of compensation are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle him, unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay~~].

(6) Benefit review conferences shall be held at a place designated by the commissioner, provided that the proceedings shall be held within the boundaries of the Commonwealth.

(7) Within one hundred twenty (120) days of the effective date of this Act, the commissioner shall promulgate administrative regulations establishing procedures for the resolution of claims, which shall include benefit review. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims.

Section 13. KRS 342.275 is amended to read as follows:

(1) Within thirty (30) days after the filing of the benefit review determination with the commissioner, any party may appeal that determination by filing a request for hearing before an administrative law judge. Proceedings before the administrative law judge shall be de novo but subject to penalties for unreasonable proceedings under KRS 342.310.

(2) The commissioner shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a hearing. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(3) ~~[In any claim in which settlement is not reached at the prehearing conference, the administrative law judge shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, except that the conference shall be held within the boundaries of the Commonwealth.]~~The administrative law judge may grant continuances according to criteria established in administrative regulations promulgated by the commissioner.~~[The commissioner shall notify the parties at issue of the time and place of the hearing.]~~ The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless ***extension is*** mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 14. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the ***arbitrator or*** administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The ***arbitrator or*** administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.[~~ The failure to file a petition for reconsideration shall not preclude an appeal on any issue.~~]

Section 15. KRS 342.315 is amended to read as follows:

(1) ***The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.***

(2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

(3) The commissioner, an arbitrator, or an administrative law judge may, upon the application of ***any***[~~either~~] party or upon his own motion, ***direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator***[~~appoint not more than three (3) disinterested and duly qualified physicians or surgeons~~] to make any necessary medical examination of the employee[~~ and to testify in respect thereto~~]. Such ***medical evaluator***[~~physicians or surgeons~~] shall file with the ***commissioner***[~~administrative law judge~~] within fifteen (15) days after such examination a written report. The ***medical evaluator***[~~physicians or surgeons~~] appointed may charge a reasonable fee not exceeding fees ***established by the commissioner***[~~permitted by administrative regulation~~] for ***those services***[~~testimony and reports in workers' compensation claims and by the workers' compensation medical fee schedule for physicians, to be paid out of the special fund~~].

(4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.

(5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.

(6) Not less often than annually the designee of the secretary of the Cabinet for Human Resources shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter[~~(2) The party filing the motion for an examination shall pay the necessary and reasonable traveling expenses incurred by the employee in submitting to such examination. If the examination is ordered on the administrative law judge's own motion, then such traveling expenses shall be paid out of the special fund~~].

Section 16. KRS 342.316 is amended to read as follows:

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator[~~. Said employer shall have the right to contribution from each previous employer, as determined in an independent civil action, wherein the employee was similarly exposed to the hazard of said occupational disease, in a sum equal to the ratio that each exposure employment time bears to the total exposure employment time, except as otherwise provided in paragraph (a) of subsection (10) of this section~~]; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later[~~, except that the time of the beginning of retraining incentive benefits awarded under KRS 342.732 shall be the date the award for those benefits by the administrative law judge becomes final~~].

(2)[~~ (a)~~] The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur.[~~;~~]

(3) [~~(b) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to~~] filing ***occupational disease***[~~of~~] claims shall be as follows:

(a)[~~1. a.~~] The application ***for resolution of claim*** shall set forth the complete work history of the ***employee***[~~applicant~~] with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least ***one (1)***[~~two (2)~~] written medical ***report***[~~reports~~] supporting his claim. ***This***[~~These~~] medical ***report***[~~reports~~] shall be made on the basis of[~~ comprehensive~~] clinical ***or X-ray examination***[~~ examinations~~] performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The ***report***[~~reports~~] shall be made by ***a*** duly-licensed ***physician***[~~physicians~~]. The commissioner shall promulgate administrative regulations which prescribe the format of the medical ***report***[~~reports~~] required by this section and the manner in which the ***report***[~~reports~~] shall be completed.

1.[~~b.~~] For coal-related occupational pneumoconiosis claims, each clinical examination shall include ***a*** chest X-ray ***examination as well as***[~~examinations and~~] spirometric tests ***when pulmonary dysfunction is alleged***.

2.[~~c.~~] For other compensable occupational pneumoconiosis claims, each clinical examination shall include ***a chest*** X-ray ***examination***[~~examinations~~] and appropriate pulmonary function tests.

(b)[~~2.~~] To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust, shall comply with accepted medical standards as follows:

1.[~~a.~~] Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

2.[~~b.~~] Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of [~~subsection (2)(b) of~~]this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. [~~(c) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to the~~] determination of ***occupational disease*** claims shall be as follows:

a.[~~1.~~] Immediately upon receipt of ***an application for resolution***[~~said application for adjustment~~] of claim, the commissioner shall notify the ***responsible***[~~affected~~] employer,[~~ the special fund,~~] and ***all***[~~any~~] other interested ***parties***[~~party of such claim~~] and shall furnish them with a full and complete copy of the ***application.***[~~claim;~~]

b. The commissioner shall assign the claim to an arbitrator and shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years

following any prior referral for examination for the same disease.

c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.

d. The arbitrator shall conduct such proceedings as are necessary to resolve the claim, and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.

e. Unless a voluntary settlement is reached by the parties, the arbitrator shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.

5. The procedure for appeal from a determination of an arbitrator shall be as set forth in KRS 342.275.

[~~2. Upon receipt of notice of the claim, the employer, the special fund, and any other interested party shall have the right to have the claimant examined by competent medical experts, at their expense, including a reasonable sum for travel. Within thirty (30) days of any such examination, the claimant or his representative shall be furnished a copy of said medical report by the party requesting such report. Also, the employer, the special fund, or any other party to the claim shall have the right to have the claimant evaluated by vocational experts or institutions, at the employer's expense, including a reasonable sum for travel. Within thirty (30) days of any vocational examination, the claimant or his representative, shall be furnished a copy of that vocational report by the party requesting that report; and~~

~~3. Within sixty (60) days of the receipt of the claim, the employer, the special fund, and any other interested party shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, then an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall set a date for a prehearing conference and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the commissioner shall be followed. Upon request of an interested party and a showing of good cause, the administrative law judge may extend, one (1) time, the time period for filing a notice of resistance as prescribed in this subparagraph, but the extension shall not exceed thirty (30) days.~~

~~(d) For claims filed under subsection (1)(a) of KRS 342.732, the procedure shall be as follows:~~

~~1. For retraining incentive benefits under KRS 342.732, the claimant shall file two (2) X-rays and the reports thereof which shall conform to the standard for X-rays contained in this subsection.~~

~~2. The commissioner shall notify the affected employer of the claim and shall furnish him with a full and complete copy of the claim.~~

~~3. Within sixty (60) days of the receipt of the claim, the employer shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall notify the affected employee thereof. In litigated claims, the regular procedures prescribed by the commissioner shall be followed.~~]

(4)[~~(3)~~] (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or, if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income[~~ or retraining incentive~~] benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(5)[~~(4)~~] The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:

(a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and

(c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section***, except as provided in KRS 342.750(6)***.

(6)[~~(5)~~] If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

(7)[~~(6)~~] No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(8)[~~(7)~~] No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.

(9)[~~(8)~~] Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard[~~ by the administrative law judge~~] when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

(10)[~~(9)~~] When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided in this chapter.

(11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in Section 34 of this Act and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.

(b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.

(12) A concluded claim for benefits by reason of contraction of coal workers pneumoconiosis shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

[~~(10) (a) Except as provided in paragraph (c) of this subsection, the employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employee was last exposed to the hazard of that occupational disease. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the special fund for all claims filed prior to January 1, 1973; and seventy-five percent (75%) shall be paid by the special fund and twenty-five percent (25%) by the employer for all claims filed thereafter. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for~~

~~silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the special fund, and the employer shall be liable for sixty percent (60%) of the compensation due and the special fund shall be liable for forty percent (40%) of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the special fund under this section, all of the compensation awarded shall be paid pursuant to KRS 342.120 and under such regulations as the commissioner may provide for such purpose; and~~

~~(b) In all claims for compensation partially payable by the special fund, the Director of the Division of the Special Fund shall be designated as codefendant.~~

~~(c) The employer in whose employment the employee was last exposed to the hazard of the disease shall alone be liable for payment of retraining incentive benefits awarded under KRS 342.732.~~]

Section 17. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge ***or arbitrator*** pursuant to the statutes and administrative regulations.

(2) Attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) One thousand dollars ($1,000) for services performed up to and including the date of a written determination by the arbitrator. This fee shall be paid by the employee from the proceeds of the award or settlement.

(b) Upon an appeal by an employee from a written determination of an arbitrator or an award or order of an administrative law judge, a fee to be fixed by the administrative law judge upon consideration of the extent, quality and complexity of services not to exceed twenty percent (20%) of the first twenty-five thousand dollars ($25,000) of any increased income benefits awarded, ten percent (10%) of the next fifteen thousand dollars ($15,000) of increased income benefits, and five percent (5%) of the remainder of the additional income benefits awarded and not to exceed in all ten thousand dollars ($10,000). This fee shall be paid by the employee from the proceeds of the award or settlement and shall be in addition to the fee, if any, awarded under subsection (2)(a) of this section.

(c) Upon an appeal by an employer or carrier from a written determination of an arbitrator or an award or order of an administrative law judge, if the employer or carrier does not prevail upon appeal, the administrative law judge shall fix an attorney's fee to be paid by the employer or carrier for the employee's attorney upon consideration of the extent, quality, and complexity of the services rendered not to exceed five thousand dollars ($5,000) per level of appeal. This attorney's fee shall be in addition to any fee awarded under subsections (2)(a) and (b) of this section.

(3) In approving an allowance of attorney's fees, the administrative law judge or arbitrator shall consider the extent, complexity, and quality of services rendered, and[~~In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable~~] in the case of death,[~~ and then by the use of~~] the Remarriage Tables of the Dutch Royal Insurance Institute. ***An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court***[~~However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000)~~].[~~ The administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~]. The date of injury or last exposure shall control the applicable maximum attorney's fee[~~, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~].

(4)[~~(2)~~] No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ***arbitrator or*** administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the ***written determination of an arbitrator or*** last appealable order of ***an***[~~the~~] administrative law judge. ***Except when the attorney's fee is to be paid by the employer or carrier,*** the attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The ***arbitrator or*** administrative law judge, upon request of the ***employee***[~~claimant~~], may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(5)[~~(3)~~] ***At the commencement of the attorney-client relationship,*** the attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(6)[~~(4)~~] The General Assembly declares that by the enactment of KRS 342.316***(3)***[~~(2)(b)~~], it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ***and arbitrator*** shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(7)[~~(5) The administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated below are followed:~~

~~(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).~~

~~(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.~~

~~(6) (a)~~] In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ***arbitrator or*** administrative law judge ***subject to the limits set forth in subsection (2) of this section***. In awarding the attorney's fee, the ***arbitrator or*** administrative law judge shall consider the factors set forth in subsection ***(3)***[~~(1)~~] of this section. ***If no additional amount is recovered upon reopening, no attorney's fee shall be awarded***[

~~(b) Thereafter, the administrative law judge shall fix the attorney's fee~~]. No[~~ attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any~~] attorney's fee ***shall*** be allowed or approved exceeding the amounts provided in subsection ***(2)(b)***[~~(1)~~] of this section applicable to any additional amount recovered.[~~ If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee.~~]

(8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge or arbitrator in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the same limitations as to maximum fees at each level except that fees for representation before administrative law judges shall not exceed ten thousand dollars ($10,000) and fees for representing employers shall not be dependent upon the result achieved. Fees for legal services in presenting a claim for re-imbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars ($1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

(9) The provisions of this section shall apply to all claims resolved pursuant to emergency administrative regulations promulgated by the commissioner pursuant to this chapter.

Section 18. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 19. KRS 342.335 is amended to read as follows:

(1) No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid

or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to ***delay or*** omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, ***which may affect the amount of money received or not paid,*** including***:***

(a) Misrepresentations of prior loss experience, hazards, classifications, payrolls, or other acts that are designed to cause a reduction in an employer's insurance premium;

(b) Prepare, make or present a false, fraudulent, or misleading statement, oral or written, for the purpose of obtaining benefits or compensation;

(c) Prepare, make, or present false or counterfeit insurance policies, certificates of insurance, insurance binders, or other documents including those relating to self-insurance, purporting to evidence with this chapter as to security; and

(d) Prepare, make or present false billing for services rendered or products delivered;

~~[misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter,]~~shall be subject to the civil or criminal penalties, or both, imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

(3) All workers' compensation fraud investigations, except for claimant fraud investigations conducted by the Division of Special Fund, shall be conducted by the Department of ***Workers' Claims and appropriate staff shall be added to aggressively perform that function. Any report of alleged violations of subsections (1) and (2) of this section received by the Department of Insurance shall be forwarded to the Department of Workers' Claims for appropriate action. Investigators within the department shall be vested with the following power and authority:***

(a) General police powers including the privileges and immunities of sheriffs, and their jurisdiction shall be coextensive with the state;

(b) Administer oaths and affirmations;

(c) Collect evidence; and

(d) Make arrests for criminal violations of this chapter established as result of its investigations.

(4) The commissioner shall have the power to issue subpoenas to order the attendance of witnesses or proffering of information and documentation relating to any alleged violation of sections (1) or (2) of this section.

(5) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies to any transaction arising from activities relating to this chapter.

~~[Insurance or the Attorney General.]~~

SECTION 20. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that the establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation, to make provisions for the general welfare of workers and their dependents, to relieve the consequences of any industrial injury or death, and to secure the payment of workers' compensation benefits provided by this chapter.

(2) The General Assembly further finds and declares that provision must be made for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet obligations because of insolvency. It is for that purpose that the General Assembly establishes mechanisms requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty associations, one (1) of whose members shall be composed of individually self-insured employers excluding individually self-insured coal employers and public sector employers; one (1) shall be composed of group self-insurers created pursuant to KRS 342.350(4); and one (1) shall be composed of individually self-insured coal operators.

SECTION 21. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

As used in Section 20 to 26 of this Act, unless the context requires otherwise:

(1) "Insolvent self-insurer" means either an individual self-insured employer or a group self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the commissioner, or who has failed to provide compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the

commissioner.

(2) "Member" means a self-insured employer or self-insurance group that participates in a guaranty fund created pursuant to Sections 20 to 26 of this Act.

(3) "Guaranty fund" means one of the three (3) guaranty funds established pursuant to Sections 20 to 26 of this Act.

(4) "Directors" means the board of directors of a guaranty fund.

(5) "Certificate of default" means a notice issued by the commissioner based upon a finding that a self-insured employer or self-insurance group has failed to pay compensation required by this chapter.

SECTION 22. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, public sector self-insured employers or self-insurance groups are specifically exempted from the provisions of Sections 20 to 26 of this Act.

SECTION 23. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each noncoal, individually self-insured employer who has qualified and been certified by the commissioner as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The commissioner shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.

(2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insurance groups or associations established under KRS 342.350(4), to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each self-insurance group or association that is authorized to self-insure and certified by the commissioner to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The commissioner shall revoke any authorization and certificate to self-insure of any self-insurance group or association for failure to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insurance group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance or reinsurance, required by this chapter. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a "plan of operation" pursuant to administrative regulations promulgated by the commissioner.

(5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

(6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insurance group or association. In addition, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's

place, and the designee's actions shall be deemed those of the director.

(7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance, and borrow funds as it deems necessary for the protection of the members and their employees.

(8) Security called by the commissioner and dispersed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly, or any other state agency.

(9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.

(10) No liability shall lie, whether at law or in equity, against any director, agent or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

SECTION 24. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.

(2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the department of workers' claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.

(3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

(4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, provided that no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars ($1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and, three-fourths of one percent (0.75%)of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

(5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars ($500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars ($500,000) or such other amount not to exceed, in any event, one million dollars ($1,000,000) based upon a maximum annual assessment for each guaranty

fund.

(6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members.

(7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.

(8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

SECTION 25. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Each guaranty fund, by making payment of compensation under this chapter, has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.

(2) Notwithstanding subsection (1) of this section, each guaranty fund shall not be liable for the payment of any penalties or interest assessed for any act or omission on the part of any person, including but not limited to the penalties provided in this chapter.

(3) Each guaranty fund shall be a party in interest in all proceedings involving compensation claims against an insolvent member whose compensation obligations have been paid or assumed by the guaranty fund. The guaranty fund shall have the same rights and defenses as the insolvent individual self-insurer.

(4) Each guaranty fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by each guaranty fund, including reasonable administrative and legal costs.

(5) Each guaranty fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the guaranty fund, including but not limited to any excess insurance carrier of the insolvent member.

SECTION 26. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner and to each member.

(2) Each guaranty fund shall be established on March 1, 1997.

(3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

Section 27. KRS 342.610 is amended to read as follows:

(1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.

(2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another (a) to have work performed consisting of the removal, excavation or drilling of soil, rock or mineral, or the cutting or removal of timber from land, or (b) to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of such person, shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

(3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by[~~ his~~] intoxication***, the influence of an illegal drug or drugs,*** or by his willful intention to injure or kill himself or another.

(4) If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his

dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.

(5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage for all persons employed or engaged to perform services on the site of the construction project for which the permit is to be issued. A property owner who intends to perform all of the construction work himself or herself or pursuant to the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter shall so certify to the local building official, in writing and on a form prescribed by the commissioner, in lieu of providing proof of workers' compensation coverage.

Section 28. KRS 342.640 is amended to read as follows:

(1) The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(a)[~~(1)~~] Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(b)[~~(2)~~] Every executive officer of a corporation;

(c)[~~(3)~~]Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire or police department shall be deemed for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled volunteer member or trainee of the civil defense corps of this state, as established under KRS Chapter 39, shall be deemed for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed for the purposes of this chapter to be in the employment of this state;

(d)[~~(4)~~] Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(e)[~~(5)~~]Subject to the provisions in ***paragraph (d)***[~~subsection (4)~~] of this ***subsection***[~~section~~], every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

(2) Every employer subject to this chapter shall, at each job site in a location accessible to all employees, conspicuously post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner. The format and contents of the notice shall be established by the commissioner through administrative regulation and copies shall be provided to the employer by its insurance carrier.

Section 29. KRS 342.715 is amended to read as follows:

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the ***arbitrator or*** administrative law judge, the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the percentage of disability as determined in this chapter.

Section 30. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For ***permanent*** total disability due to a work-related injury or occupational disease, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related ***impairment and conditions compensable under KRS 342.732 and hearing loss***[~~disability~~] shall not be considered in determining whether the employee is totally disabled for purposes of this subsection ***and shall not extend the maximum period for payment of***

disability benefits.

(b) For permanent, partial disability,~~[where an employee returns to work at a wage equal to or greater than the employee's preinjury wage,]~~ sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by ***the***~~[his]~~ percentage of impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***times the factor set forth in the table that follows:***~~[unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section.]~~

AMA Impairment	***Factor***
0 to 5%	***.75***
6 to 10%	***1.00***
11 to 15%	***1.25***
16 to 20%	***1.50***
21 to 25%	***1.75***
26 to 30%	***2.00***
31 to 35%	***2.25***
36 and above	***2.50***

~~[The period of]~~Disability under this paragraph for nonwork-related disabilities ***and conditions previously compensated under this chapter*** shall not extend the maximum period ***or the amount*** of ***partial*** disability~~[under this paragraph]~~. ***Impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in Section 38 of this Act shall not be considered in determining the extent of disability or the duration of payments due under this section.*** Any temporary ***partial or temporary*** total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) ~~[For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.~~

~~(d)]~~For permanent, partial disability, if an employee sustains~~[impairment or]~~ disability~~[in excess]~~ of fifty percent (50%) ***or less*** as a result of a work-related injury~~[or occupational disease and prior work-related active disability]~~ the compensable permanent partial disability period shall~~[then]~~ be ***four hundred twenty-five (425) weeks, and if the disability is greater than fifty percent (50%), the compensable permanent partial disability period shall be*** five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. ***Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and in no event shall exceed seventy-five percent (75%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred and twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in subsection (1)(b) of this section would yield a greater percentage of disability.***

(d) For temporary, partial disability, when the employee has returned to work pursuant to an employer program to accommodate the employee's impairment with work encompassing lesser exertional requirements or shorter working days, and lower earnings than the employee's average weekly wage earned, the insurance

carrier shall pay an amount equal to eighty-five percent (85%) of the employee's average weekly wage not to exceed one hundred percent (100%) of the state average wage less the actual earnings of the employee while in the accommodated duty program. Temporary, partial disability benefits shall be paid for a period not to exceed fifty-two (52) weeks. An employee's refusal to accept accommodated duty employment within reasonably imposed medical restrictions shall result in a forfeiture of income benefits during the period of refusal. Disputes concerning a purported failure of an employee to accept suitable accommodated duty employment shall be resolved by an arbitrator in expedited proceedings~~[Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection]~~.

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) ***All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old age Social Security retirement benefits***~~[If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday]~~.

(5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.

(6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan, which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.

Section 31. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

(1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.

(d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, 25 percent.

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.

(6) ***In addition to other benefits as provided by this chapter,*** if death occurs ***within four (4) years of the date of injury*** as a direct result of a work related injury,[~~and the deceased has no statutory dependents, as determined by this section,~~] a lump-sum payment of ***twenty-five thousand dollars ($25,000)***[~~$10,000~~] shall be ***made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be*** paid[~~to his estate, in addition to the amount provided for in KRS 342.720; provided, however, that the lump sum payment shall be reduced by any income benefits previously paid on account of that injury~~].

(7) All benefits awarded pursuant to this section***, other than those provided in subsection (6) of this section,*** shall be subject to the limitations contained in KRS 342.730(4).

Section 32. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.

(2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the ***arbitrator,*** administrative law judge***,*** or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of ***all*** the amounts authorized to be paid therefrom under the authority of this subsection ***including reimbursement of the special fund of all liability apportioned to it*** and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. ***This provision shall apply to all pending claims upon which a final order has not been entered.***

(5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.

(6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

Section 33. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If ***an employee has a radiographic classification of category 1/1 or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by report of X-ray which conforms to the standards for X-rays contained in subsection (2) of KRS 342.316, and respiratory impairment resulting from exposure to coal mine dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to eighty percent (80%) of the employee's average weekly wage as determined by KRS 342.740 but not more than one hundred percent (100%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks. These benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking twenty-four (24) or more instruction hours per week in a bona fide training or education program approved***[~~the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X rays and reports of the X rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only retraining incentive benefit which shall be an amount equal to sixty six and two thirds percent (66 2/3%) of the employee's average weekly wage but not more than seventy five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not to exceed two hundred and eight (208) weeks. These benefits may be paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS~~

~~342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be collected semimonthly as provided in KRS 342.040. While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved~~] under administrative regulations to be promulgated by the commissioner***. The employer shall also pay***,[~~ benefits awarded under this paragraph shall be paid~~] directly to the institution conducting the training or education program***, instruction, tuition, and material costs not to exceed five thousand dollars ($5,000)***[~~on a semimonthly basis~~]. The benefit shall not be paid for a period in which the employee ceases to participate in the program. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)***. The period of one hundred four (104) weeks during which this benefit is payable shall begin no later than the one hundred eightieth day after the order awarding the benefit becomes final. If an employee completes an approved program of training in less than one hundred four (104) weeks and that employee has accepted a bona fide offer of employment at a location more than fifty (50) miles from the employee's usual residence in the field for which the employee has been trained, the employee shall be paid in a lump sum for relocation the lesser of the sum of three thousand dollars ($3,000) or the amount remaining in unpaid weekly training benefits as provided by this section***[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category[~~ 1/0,~~] 1/1[~~,~~] or 1/2, based on the latest ILO International Classification of Radiographics[~~,~~] and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of ***less than*** fifty-five percent (55%)[~~ or more but less than eighty percent (80%)~~] of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association***, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***[~~,~~] there shall be an irrebuttable presumption that the employee has an occupational disability rating of ***fifty***[~~seventy-five~~] percent ***(50%)***[~~(75%)~~] resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of ***fifty percent (50%)***[~~seventy-five (75%)~~] but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred and twenty-five (425) weeks, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(c) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category ***2/1, 2/2, or 2/3 coal workers' pneumoconiosis***[~~1/0, 1/1, or 1/2~~], based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association ***or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***, there shall be an irrebuttable presumption that the employee is ***seventy-five percent (75%)***[~~totally~~] disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage ***multiplied by the disability rating of seventy-five percent (75%)*** but not ***to exceed***[~~more than~~] ***seventy-five***[~~ one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. ***The award shall be payable for a period not to exceed five hundred and twenty (520) weeks.*** Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d) If ***it is determined***[~~the administrative law judge finds~~] that an employee has ***radiographic classification of 3/2 or 3/3*** occupational pneumoconiosis ***based on the latest ILO International Classification of Radiographs, and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the latest edition of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association,***[~~with a radiographic classification of category 2/1, 2/2, 2/3,~~

~~3/2, 3/3,]~~ or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the ***employee***~~[administrative law judge]~~ shall ***be awarded***~~[award]~~ income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall ***benefits***~~[a claim]~~ be ***paid***~~[filed]~~ under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge ***or arbitrator*** that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge ***or arbitrator*** shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

(4) In no event shall income benefits awarded under~~[paragraphs (a) or (b) of subsection (1) of]~~ this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

SECTION 34. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Division of the Kentucky Coal Workers' Pneumoconiosis Fund in the Department of Workplace Standards which shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration and legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.

(3) The Kentucky coal workers' pneumoconiosis fund shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after the effective date of this Act. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the coal workers' pneumoconiosis fund is established under subsection (4) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.

(4) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.

(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents ($0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.

(c) As of September 1, 1997, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1

of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than December 1 of the year preceding the rate change.

(5) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.

(6) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

(7) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

SECTION 35. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner or his designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds or self-insured groups and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(i).

(2) All individual self-insured employers and self-insurance groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year. For self-insurance groups, the financial statement shall include an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods used.

(3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioners' designees, and expert assistance as necessarily incurred in the examination.

(4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

(5) Not less often than biennially the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of self-insureds so that payment of liabilities to workers under this chapter is assured.

SECTION 36. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Employer leasing company" or "lessor" means an entity that places employees in other businesses pursuant to an employee leasing arrangement.

(b) "Lessee" means an employer which obtains all or part of its workforce from another entity through an employee leasing arrangement.

(c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.

(d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee

leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employer responsibilities among two (2) or more entities. For purposes of this rule, employee leasing arrangement does not include arrangements to provide temporary workers.

(e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short term workload conditions, not to exceed ninety (90) calendar days. For temporary workers, the leasing company shall be deemed the employer and shall be subject to the provisions of this chapter. The lessee that leases employees from a leasing company shall be deemed the employer unless the leased employee is a temporary worker.

(2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.

(3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

(4) A lessee shall fulfill its statutory responsibility to secure benefits under the Workers' Compensation Act by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. The exposure and experience of the lessee shall be used in determining the premium for such policy and shall include coverage for all leased employees.

SECTION 37. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information pursuant to KRS 342.335 or requested by the commissioner or his authorized representative. No civil cause of action of any nature shall arise against the person:

(a) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from law enforcement officials, their agents, or employees;

(b) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from other persons; or

(c) For any information furnished in reports to the commissioner.

(2) The commissioner or any employee or agent of the Department of Workers' Claims shall not be subject to civil liability for libel, slander, or any other relevant tort relating to the execution of their duties pursuant to KRS 342.335 and KRS 342.990. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the Department of Workers' Claims or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) KRS 342.335 and KRS 342.990 shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

(4) The papers, documents, reports, or evidence relative to the information or reports received under KRS 342.335 shall not be subject to public inspection for so long as the commissioner deems reasonably necessary for the completion of any investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to any investigation shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of violations of KRS 342.335.

SECTION 38. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment the extent of binaural hearing impairment shall be determined under the latest available edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730 except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than eight percent (8%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.

(3) The commissioner shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.

(4) When audiograms and other testing reveals a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace there shall be a rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

Section 39. KRS 342.803 is amended to read as follows:

(1) The ***Kentucky*** Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of[~~ Subtitle 24 and other provisions of~~] KRS Chapter 304 applicable to domestic mutual insurance companies unless otherwise provided or exempted in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

(2) Except for initial funding for start-up, the authority shall be entirely self-supporting.

(3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4) [~~On or before September 1, 1995, ~~]The authority shall[~~ begin to~~] provide coverage and issue policies[~~, as provided in subsection (1) of this section,~~] as an insurer in the voluntary market and as ***an insurer of last resort***[~~a residual market mechanism~~].

Section 40. KRS 342.805 is amended to read as follows:

As used in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~], unless the context otherwise requires:

(1) "Authority" means the ***Kentucky*** Employers' Mutual Insurance Authority.

(2) "Board" means the board of directors of the authority.

(3) ***"Insurer of last resort" means an entity that provides workers' compensation coverage to any and all employers who comply with the provisions of KRS 342.801 to 342.843 for their business in and incidental to the Commonwealth.***

(4) "Manager" means the manager of the authority.

(5)[~~(4)~~] "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage under this authority.

Section 41. KRS 342.811 is amended to read as follows:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to[~~ Subtitle 24 of~~] KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

(1) Sue or be sued;

(2) Hire a manager to administer the authority;

(3) Adopt a corporate seal;

(4) Develop bylaws for the operation of the authority;

(5) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;

(6) Examine and adopt an annual operating budget for the authority;

(7) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;

(8) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;

(9) Develop broad policy for the long-term operation of the authority consistent with its mission and fiduciary responsibility;

(10) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A;

(11) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness***;***[~~.~~]

(12) ***Pursuant to***[~~Subject to Subtitle 13 of ~~] KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;

(13) Pursuant to KRS 342.823, assess policyholders[~~ to cover its liabilities as provided in KRS 304.24-230~~]; and

(14) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority,

either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

Section 42. KRS 342.817 is amended to read as follows:

(1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks ***for the authority***.

(2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the ***market of last resort***[~~residual market~~] and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.

(3) Multitiered premium or rating plans may be developed to provide ***workers' compensation*** coverage to insureds ***in the Commonwealth***[~~in the residual market mechanism established by the authority, and who would not otherwise meet the underwriting standards required by the authority~~].

(4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a ***market of last resort***[~~residual market mechanism~~].

(5) The rates ***established***[~~developed~~] by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.

(6) ***Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the insurance commissioner in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.***

(7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for ***eighty-four (84)***[~~thirty six (36)~~] months.

Section 43. KRS 342.823 is amended to read as follows:

(1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities ***except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners***[~~by the amount of future anticipated investment income~~].

(2) The board shall submit an annual independently-audited ***financial statement***[~~report~~] in accordance with procedures governing annual ***statements***[~~reports~~] adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year. The ***statement***[~~report~~] shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the co-chairs of the Legislative Research Commission. It shall indicate the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

- (a) A summary of the prior quarterly reports required in KRS 342.821;
- (b) An actuarial projection of solvency status for at least ten (10) years in the future; and
- (c) Any recommendations pertaining to the same.

(3) If ***at any time*** the assets of the authority[~~ at any time~~] are less than its liabilities, the board ***may***[~~shall~~] levy an assessment on its policyholders***. The board may***[~~ and~~] enforce payment of the assessment in the manner provided in Subtitle 24 of KRS Chapter 304.

Section 44. KRS 342.841 is amended to read as follows:

The ***board***[~~authority~~] shall comply with KRS Chapter 61 in regard to open meetings and the conduct of ordinary business, except that proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth may be closed to the public. ***The authority shall act as any other domestic mutual insurance company with regard to all of its records. Any request for records shall be in writing. Any records requested shall be in pursuit of the investigation and the confidentiality of the information in the records shall be maintained.***

SECTION 45. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of any other law notwithstanding, the Governor shall include in the budget recommendation for the executive branch and in the draft branch budget bill for the executive branch submitted to each regular session of

the General Assembly for the biennium period beginning July 1, 1998, and for each biennium thereafter, recommendations for appropriations as provided in subsection (1)(c) of Section 4 of this Act to be made by the General Assembly to the benefit reserve fund within the Workers' Compensation Funding Commission established by KRS Chapter 342.

(2) The amount to be recommended for appropriation to the benefit reserve fund within the Workers' Compensation Funding Commission shall be nineteen million dollars ($19,000,000) of the coal severance tax, levied under KRS 143.020, estimate for each fiscal year of the biennium.

Section 46. 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section I. Labor, at pages 1901 and 1902, is amended to read as follows:

I. LABOR

59. LABOR CABINET

a. General Administration and Support

		1996-97	1997-98
General Fund		485,900	503,800
Restricted Funds		***3,612,900***	***3,691,700***
~~[Restricted Funds~~		~~3,556,700~~	~~3,607,000]~~
Total		***4,098,800***	***4,195,500***
~~[Total~~	~~4,042,600~~	~~4,110,800]~~	

b. Workplace Standards

		1996-97	1997-98
General Fund		1,660,700	1,730,600
Restricted Funds		***182,090,200***	***203,824,400***
~~[Restricted Funds~~		~~177,871,200~~	~~195,454,900]~~
Federal Funds		2,419,700	2,303,100
Total		***186,170,600***	***207,858,100***
~~[Total~~	~~181,951,600~~	~~199,488,600]~~	

c. Workers Claims

	1996-97	1997-98
Restricted Funds	***12,180,000***	***15,273,700***
~~[Restricted Funds~~	~~10,159,800~~	~~10,614,200]~~

d. Kentucky Occupational Safety and Health Review Commission

	1996-97	1997-98
Restricted Funds	272,700	293,600
Federal Funds	169,700	161,200
Total	442,400	454,800

TOTAL - LABOR CABINET

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***198,155,800***	***223,083,400***
~~[Restricted Funds~~	~~191,860,400~~	~~209,969,700]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***202,891,800***	***227,782,100***
~~[TOTAL~~	~~196,596,400~~	~~214,668,400]~~

60. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	1996-97	1997-98
Restricted Funds	***202,665,200***	***227,588,900***
~~[Restricted Funds~~	~~196,369,800~~	~~214,475,200]~~

TOTAL - LABOR

	1996-97	1997-98
General Fund	2,146.600	2,234,400
Restricted Funds	***400,821,000***	***450,672,300***
~~[Restricted Funds~~	~~388,230,200~~	~~424,444,900]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***405,557,000***	***455,371,000***
~~[TOTAL~~	~~392,966,200~~	~~429,143,600]~~

The credit provided for in subsection (1)(c) of Section 4 of this Act shall be made prior to the transfer to the Local Government Economic Assistance Fund required by 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operations, Item 12. Special Funds at pages 1876 and 1877, and notwithstanding KRS 42.4582. The appropriations to the Local Government Economic Assistance Fund and the Local Government Economic Development Fund contained in 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operation, Item 12. Special Funds, shall be adjusted accordingly. This Section of this Act prevails over any conflicting provision of 1996 Kentucky Acts Chapter 382, the 1996-98 State/Executive Branch Budget Memorandum.

Section 47. KRS 342.990 is amended to read as follows:

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

  (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

  (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

  (c) Any person who violates KRS 342.020(9), 342.035(2), KRS 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

  (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

  (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation.

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District and Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Except as provided in paragraph (d) of this subsection, a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a misdemeanor where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300), and shall be punished for each offense by:

1. Imprisonment for not more than one (1) year;

2. A fine of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. or 2. of this paragraph.

(d) Where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300), a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a felony and shall be punished for each offense by:

1. Imprisonment for not less than one (1) year nor more than five (5) years;

2. A fine of not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violations, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(e) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in Section 36 of this Act for the purpose of depriving one or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium, shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred and eighty (180) days, or both, for each offense.

(f) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner, in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer, in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any arbitrator, administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

SECTION 48. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Within sixty (60) days of the effective date of this Act, the licensed workers' compensation advisory organizations shall file with the commissioner an estimate of changes in prospective workers' compensation losses attributable to any net savings under this Act. Within sixty (60) days of receipt of the workers' compensation filing, the commissioner shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.

(2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under this Act for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the commissioner as provided in KRS 304.13-051(2).

(3) Unless the commissioner enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).

SECTION 49. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this chapter, the commissioner shall evaluate alternate methods of establishing workers' compensation insurance rates for employers in the construction industry and may by administrative regulation prescribe that insurance carriers base their premium determination methodology for certain classifications of workers' compensation insurance on the aggregate number of hours worked by employees of the employers with specific Standard Industrial Classification Codes rather than upon the gross wages paid by the employer.

Section 50. KRS 304.13-161 is amended to read as follows:

(1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.

(2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the commissioner for further review of the application of the rating system. The commissioner shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The commissioner may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.

(3) Notwithstanding any provision of this chapter to the contrary, the commissioner shall require, as a condition of licensure to conduct or market workers' compensation insurance in the Commonwealth, each insurer or agent thereof to notify in writing each insured at the time a workers' compensation insurance policy is written, issued, or renewed on or after April 1, 1997, of the insured's rights afforded by this section. Failure to provide written notice to an insured shall be grounds to suspend or revoke a license to conduct or market workers' compensation insurance in the Commonwealth. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in a manner and format prescribed through administrative regulations promulgated by the commissioner.

(4) On each workers' compensation insurance policy issued or renewed on or after April 1, 1997, the workers' compensation insurer shall provide the policyholder with a written explanation of the following:

(a) The insured's experience modification factor and the data and methodology utilized in the calculation of the factor;

(b) The workers' compensation rating laws in easily understandable and nontechnical language; and

(c) The workers' compensation policyholder's rights under this subtitle to request and receive rating information from the commissioner.

Section 51. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the ***arbitrator or*** administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

Section 52. KRS 342.040 is amended to read as follows:

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid except that if the ***arbitrator or*** administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate, or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

(2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the ***arbitrator or*** administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.

(3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the ***arbitrator or*** administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.

(4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Section 53. KRS 342.090 is amended to read as follows:

Payment of death benefits in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the ***arbitrator or*** administrative law judge shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the ***arbitrator or*** administrative law judge directing payment, persons receiving payment under such order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

Section 54. KRS 342.160 is amended to read as follows:

(1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the ***arbitrator or*** administrative law judge. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.

(2) If the dependents are a widow, widower or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator or next friend of such dependents.

Section 55. KRS 342.205 is amended to read as follows:

(1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the ***arbitrator or*** administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified

physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.

(2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.

(3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

(4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the ***arbitrator or*** administrative law judge may require.

(5) The department shall supply forms for the report.

Section 56. KRS 342.240 is amended to read as follows:

The department shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The commissioner shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the ***arbitrators and*** administrative law judges, on which shall be inserted the words "Department of Workers' Claims, State of Kentucky, official seal." The board***, the arbitrators,*** and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the commissioner, all actions or proceedings against the board or a member in his official capacity, or against an ***arbitrator or*** administrative law judge or the commissioner in his official capacity shall be brought in the courts of Franklin County.

Section 57. KRS 342.245 is amended to read as follows:

All proceedings of the board***, arbitrators,*** and the administrative law judges shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim or proceeding considered, heard or passed upon by each ***arbitrator,*** administrative law judge and the board, with the award, finding or decisions made thereon.

Section 58. KRS 342.260 is amended to read as follows:

(1) The commissioner shall prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the ***arbitrators and*** administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.

(2) The commissioner shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The commissioner may adopt life tables published by the U.S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an ***arbitrator or*** administrative law judge shall apply to computations concerning that opinion, award, or settlement.

(3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any ***arbitrator or*** administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(4) The sheriff shall serve all subpoenas of the board***, arbitrators,*** and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any ***arbitrator or*** administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.

(5) The Circuit Court shall, on application of the board, any member thereof, or any ***arbitrator or*** administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Section 59. KRS 342.305 is amended to read as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the ***arbitrator or*** administrative law judge**,** or of an order or decision of the ***arbitrator,*** administrative law judge**,** or board, or of an award of the ***arbitrator or*** administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals shall be modified to conform to any decision of the ***arbitrator or*** administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Section 60. KRS 342.310 is amended to read as follows:

(1) If any ***arbitrator,*** administrative law judge, the board**,** or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorney fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.

(2) If any ***arbitrator,*** administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that a party has committed acts in violation of KRS 342.335(1) or (2), that party may be ordered to make restitution for any compensation paid as a result of the commission of such acts.

Section 61. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 62. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each ***arbitrator and*** administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the commissioner deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the commissioner to publish and distribute among employers and employees any general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

Section 63. KRS 342.700 is amended to read as follows:

(1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).

(2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an ***arbitrator or*** administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This

subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

(3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Section 64. KRS 342.710 is amended to read as follows:

(1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.

(2) The commissioner shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.

(3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. In all such instances, the ***arbitrator or*** administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The ***arbitrator or*** administrative law judge on his own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, the ***arbitrator or*** administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the ***arbitrator or*** administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

(4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.

(5) Refusal to accept rehabilitation pursuant to an order of an ***arbitrator or*** administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

(6) The commissioner shall cooperate on a reciprocal basis with the Department of Vocational Rehabilitation and the Department for Employment Services of the Kentucky Cabinet for Workforce Development. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Department of Vocational Rehabilitation or Department for Employment Services following the refusal by the employer or his insurance carrier to provide such services, the ***arbitrator or*** administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or his insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.

(7) Prior to an order from an ***arbitrator or*** administrative law judge, the provisions of this section shall not be mandatory.

Section 65. KRS 342.735 is amended to read as follows:

The commissioner shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The commissioner may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an ***arbitrator or*** administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the ***arbitrator or*** administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

Section 66. KRS 342.780 is amended to read as follows:

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the ***arbitrator or*** administrative law judge shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

Section 67. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

(1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and

(2) Has not made a deposit of security, indemnity, or bond acceptable to the commissioner to secure the payment of compensation liability; and

(3) Has failed to make payment of compensation according to the terms of that award,

the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the ***arbitrator or*** administrative law judge relative to the claim as certified by the commissioner and to state that there is due to plaintiff on account of the opinion, order, or award of the ***arbitrator or*** administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

Section 68. KRS 342.318 is amended to read as follows:

The provisions of KRS 342.316***(4)***[~~(3)~~] shall apply to employees' asbestos-related disease claims filed on or after July 15, 1986.

Section 69. KRS 342.329 is amended to read as follows:

(1) The commissioner shall establish ***a division of***[~~an~~] Ombudsman ***and Workers' Compensation Specialist Services***[~~program~~]. The functions of the ***division***[~~ombudsman~~] shall include:

  (a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;

  (b) Responding to inquiries and complaints relative to the workers' compensation program;

  (c) Advising all parties of their rights and obligations under this chapter;[~~ and~~]

  (d) ***Assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and***

  (e) Performing other duties as required by the commissioner through administrative regulations promulgated by the commissioner.

(2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.

(3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.

(4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the ***division***[~~ombudsman program~~].

Section 70. KRS 393.082 is amended to read as follows:

(1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or commissioner's designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with

respect to the same injury or occupational disease.

(3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.

(4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

(5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.

(6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.

(7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or commissioner's designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.

(8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.

(9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency or employee, beyond that expressly set forth in a comprehensive distribution plan.

(10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.

(11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.

(12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by[~~subsection (1) of~~] KRS 342.320, as well as the approval of the commissioner or the commissioner's designee.

(13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

Section 71. KRS 342.155 is amended to read as follows:

Whenever the administrative law judge considers it expedient, any lump sum which is paid as provided in ***this chapter***[~~KRS 342.150 hereof~~] shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties and liabilities of the trustee shall be determined by the general laws of this state.

Section 72. KRS 342.1201 is amended to read as follows:

(1) The General Assembly finds and declares that the estimated projected unfunded liability of the workers' compensation special fund is one billion seven hundred million dollars ($1,700,000,000).

(2) The General Assembly finds and declares that approximately seventy-eight percent (78%) of the total liability of the special fund over a five (5) year period ending in July, 1987, is attributable to employers who are engaged in the severance or processing of coal.

(3) The General Assembly finds and declares that more than ninety-five percent (95%) of the total liability of the special fund for occupational disease is attributable to benefits awarded for coal workers' pneumoconiosis (black lung) claims to employees of employers engaged in the severance or processing of coal.

(4) The General Assembly further finds and declares that approximately thirty percent (30%) of the total liability of the special fund for traumatic injuries is attributable to benefits awarded to employees of employers who are engaged in the severance or processing of coal; and

(5) The General Assembly hereby finds and declares that the failure to satisfactorily fund the special fund liabilities or to make other satisfactory arrangements, and the corresponding unpredictability and inefficiency has imposed, and continues to impose, a substantial burden on employers of the Commonwealth whose assessments or taxes have heretofore been used to pay the special fund liabilities, and that if the burden on employers is allowed to continue unmitigated, there will be a resulting increase in unemployment and an out-migration of employers from the Commonwealth, and new employers will be discouraged from locating in the Commonwealth.

(6) Therefore, it is the intent of the General Assembly in imposing the additional assessment required in ***Section 34 of this Act***~~[paragraph (b) of subsection (1) of KRS 342.122]~~ to more nearly equate the level of assessment to the level of liabilities of the special fund and thus, the additional burden of assessment must rest upon employers engaged in the severance or processing of coal, as defined in KRS 342.0011.

Section 73. The following KRS sections are repealed:

342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart -- Limit on special fund's liability for all other injury claims.

342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician -- Report -- Fees and expenses -- Decision of administrative law judge.

342.150 Lump-sum compensation -- When and how made.

342.352 Voluntary pilot programs for integrated management of employer's worker compensation and group health insurance claims -- Twenty-four hour coverage.

342.720 Burial expense.

Section 74. The General Assembly finds and declares that workers who incur injuries covered by KRS Chapter 342 are not assured that prescribed benefits will be promptly delivered, mechanisms designed to establish the long-term solvency of the special fund have failed to reduce its unfunded liability, and many of the Commonwealth's employers are placed at a competitive disadvantage due to the cost of securing workers' compensation insurance coverage. These circumstances threaten the vitality of the Commonwealth's economy and the jobs and well-being of its workforce. Whereas it is in the interest of all citizens that the provisions of this Act shall be implemented as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Motions, Petitions and Communications

Representative Gooch moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Gooch moved the adoption of the following **Legislative Citation No. 1**. Agreed.

The House of Representatives of the Commonwealth of Kentucky adjourns this day in honor of Sarah Lantrip. It can be said of Sarah Lantrip, who is recognized by this esteemed body as the beloved and respected citizen of Nebo, Kentucky that she is indeed a virtuous individual whose integrity was in fact never questioned and now that she has been called to her just reward the Kentucky House of Representatives joins Representative Jim Gooch, Jr., in the mourning of this tragic and untimely death and prays that her good works and exemplary life will surely reserve her a distinguished place at the right hand of God. Inasmuch as this grievous death is mourned by many, this honorable body extends the most sincere condolences to the citizens of Nebo and to the family of this most revered Lady and adjourns this day with a moment of silence for Sarah Lantrip. Done at Frankfort, Kentucky this fourth day of December, nineteen hundred and ninety-six. **Legislative Citation No. 1** was adopted without objection.

Floor Amendments

Floor Amendment No. 1 to **HB 1**, by Representative Riggs:

On page 101, line 9, after "***conditions***" by deleting the following "***, not to exceed ninety (90) calendar days***"

Floor Amendment No. 2 to **HB 1**, by Representative Riggs:

On page 117, deleting Section 49 in its entirety by deleting lines 21 through 27; and

On page 118, by deleting lines 1 and 2; and by renumbering all subsequent sections accordingly.

Motions, Petitions and Communications (Cont.)

Representative Deskins inquired if health care was germane to the call of the present Special Session of the General Assembly.

The Speaker ruled that health care was not germane to the present Special Session of the General Assembly.

The following member filed a request to have his name added as co-sponsor of a Bill:

HB 5, Representative Long.

Representative Stumbo moved that **HB 5** be recommited to the Committee on Appropriations and Revenue. Agreed.

Announcements

The following meetings were announced:

Minority Caucus, 9:00 a.m., Room 111, December 5.

Appropriations and Revenue, Room 131, 30 minutes upon adjournment.

Adjournment

Representative Stumbo moved that the House adjourn until 10:00 a.m. Thursday, December 5, 1996.

On the roll call the vote was **Yeas 79**--Adams, Adkins, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Hogancamp, Horlander, Jenkins, Jordan, Kerr, Lee, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Nays 8--Buis, Crall, Deskins, Heleringer, Lile, Mullinix, Nunn, Todd.

The motion to adjourn was adopted.

THURSDAY, DECEMBER 5, 1996

FOURTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Chuck Ellestad, Church of the Ascension, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Allen, Fox, Maggard, and Maricle.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 4, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Report of Committees

The Committee on Labor and Industry reported **HB 1**, with Committee Substitute attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules.

The Committee Substitute to **HB 1** is as follows:

AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related harmful change in the human organism, ***established by objective medical criteria,*** arising out of and in the course of employment, including damage to or loss of a prosthetic appliance, but does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease ***and damage to a prosthetic appliance***, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this section shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure" as used in KRS 342.316 shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.

(5) "Death" means death resulting from an injury or occupational disease.

(6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.

(7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.

(8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

(9) "Commissioner" means the commissioner of the Department of Workers' Claims.

(10) "Board" means the Workers' Compensation Board.

(11) ***(a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from the effects of an injury or has not reached a level of improvement that would permit a return to his regular employment;***

(b) "Temporary partial disability" means the condition of an employee who, due to the effects of an injury, returns to work pursuant to an employer program to accommodate the employee's impairment with work encompassing either lesser exertional requirements or shorter working days and lower earnings than the employee earned prior to the injury;

(c) "Permanent partial disability" means the condition of an employee who, due to the effects of an injury, has a permanent impairment rating pursuant to the latest edition of the "Guide to the Evaluation of Functional Impairment" of the American Medical Association but retains the ability to perform gainful work; and

(d) "Permanent total disability" means the inability to compete to obtain the kind of work the employee is customarily able to do in the state economy as a result of a work-related injury or injuries under this chapter, except that total disability shall be irrebuttably presumed to exist for:

1. Total and permanent loss of sight in both eyes;

2. Loss of both feet at or above the ankle;

3. Loss of both hands at or above the wrist;

4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;

5. An injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;

6. An injury to the skull resulting in incurable insanity or imbecility; or

7. Total loss of hearing[~~"Disability" means a decrease of wage earning capacity due to injury or loss of ability to compete to obtain the kind of work the employee is customarily able to do, in the area where he lives, taking into consideration his age, occupation, education, effect upon employee's general health of continuing in the kind of work he is customarily able to do, and impairment or disfigurement~~].

(12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

(13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.

(14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.

(15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

(16) "Person" means any individual, partnership, firm, association, trust, joint venture, corporation, or legal representative thereof.

(17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from others than the employer as evidenced by the employee's federal and state tax returns.

(18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.

(19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.

(20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.

(21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the ***Kentucky*** Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.

(23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or

processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.

(b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

(24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. ***For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.***

(25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. ***For policies covering leased employees as defined in Section 33 of this Act, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in Section 33 of this Act for each leased employee for that portion of the payroll pertaining to the leased employee.***

(b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).

(28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:

(a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

(b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.

(c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by ***1.25***[~~1.12~~] and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.

(d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.

(e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).

(f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

(g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection[~~, except that the value for each such employer's claims shall be the total of the indemnity benefits paid by the employer, adjusted to current benefit levels, plus the medical benefits paid~~].

(h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents ($0.30) per one hundred dollars ($100) of the employer's most recent annualized payroll for employees covered by this chapter.

(29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

(30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.

(32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.

(33) "Objective medical criteria" means information gained through direct observation and testing, utilizing objective or standardized methods.

(34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.

(35) "Catastrophic injury" means an injury resulting in paraplegia; quadriplegia; amputation of either or both lower or upper extremities, or a combination thereof; total blindness; total loss of hearing; or organic brain damage resulting in imbecility.

Section 2. KRS 342.120 is amended to read as follows:

(1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) ***The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred after the effective date of this Act.***[~~A claimant may name the special fund as a party in the original application for benefits, or either party shall as soon as practicable, by motion, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if either or both of the following appears:~~

~~(a) The employee is disabled, whether from a compensable injury, occupational disease, pre-existing disease, or otherwise, and has received a subsequent compensable injury by accident, or has developed an occupational disease;~~

~~(b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.~~

~~(3) All motions to join the special fund shall include proper allegations demonstrating the basis for joinder and certification of the fact that a copy of the motion and the entire case file has been forwarded to the special fund at the cost of the movant.~~

~~(4) Failure to move for joinder of the special fund within the time limit prescribed by this section, without a showing of good cause, shall bar any recovery against the special fund.~~

~~(5) When the special fund has been made a party, the administrative law judge may direct the procedures provided in KRS 342.121.~~

~~(6) If it is found that the employee is a person mentioned in paragraphs (a) or (b) of subsection (2) of this section and a subsequent compensable injury or occupational disease has resulted in additional permanent disability so that the degree of disability caused by the combined disabilities is greater than that which would have resulted from the subsequent injury or occupational disease alone, and the employee is entitled to receive compensation on the basis of the combined~~

~~disabilities, the employer shall be liable for the payment of all income benefits until the benefits paid have reached a percentage of the full income benefits awarded by the administrative law judge which is equal to the percentage of disability which would have resulted from the latter injury or occupational disease had there been no pre-existing disability or dormant, but aroused disease or condition.~~

~~(7) The remaining compensation for which such resulting condition would entitle the employee, including any compensation for disability resulting from a dormant disease or condition aroused into disabling reality by the injury or occupational disease, but excluding all compensation which the provisions of this chapter would have afforded on account of prior disabling disease or injury had it been compensated thereunder, shall be paid out of the special fund provided for in KRS 342.122. Such remaining compensation shall be paid directly to the employee under such regulations as the secretary of finance and administration may provide for such purpose.~~

~~(8) In making the computation for the apportionment of benefits under this section, the administrative law judge shall determine the amount of the employee's weekly income benefits and apportion the award commencing with the employer and special fund as follows:~~

~~(a) For benefits awarded under this chapter, the portions shall be based on the number of weeks stated therein;~~]

(3) [~~(b) In instances~~]Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, ***with the period of payment beginning on the date settlement was approved by an administrative law judge*** unless otherwise agreed by all parties.

Section 3. KRS 342.122 is amended to read as follows:

[~~(1) (a) For the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Division of Special Fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and, financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth enacted by the General Assembly, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4) and there is hereby imposed on and after January 1, 1990, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional special fund assessment at the rate of forty-seven percent (47%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1990, an additional assessment at the rate of forty-seven percent (47%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(c) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on such premiums.~~

~~(2) Each November 15, the funding commission shall determine the amount of premiums reported and assessments imposed in subsection (1) of this section for the past period as appropriate. If the funding commission determines that the special fund assessment rate imposed to produce seventy million dollars ($70,000,000) or the additional special fund assessment rate imposed to produce forty million dollars ($40,000,000) are likely to produce more or less than seventy million dollars ($70,000,000) or forty million dollars ($40,000,000) during the next annual period, the commission shall, based upon such determination, calculate such adjustments to each rate as shall be necessary to provide seventy million dollars ($70,000,000) and forty million dollars ($40,000,000) respectively, during the next annual period beginning on January 1 of each year. On or before December 1 of each year, the commission shall notify each insurance company writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the adjusted rates which shall become effective on January 1, of each year, unless modified by the General Assembly.~~

~~(3) (a) Notwithstanding the assessment rates in subsection (1) of this section or the special fund assessment amounts specified in subsection (2) of this section, for calendar year 1995, the funding commission shall impose a special fund assessment rate necessary to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(b) For calendar year 1996 the funding commission shall impose a special fund assessment rate necessary to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(c) 1. The assessment rate calculated to produce seventy-eight million, six hundred sixty-two thousand sixty-two~~

~~dollars ($78,662,062) under paragraph (a) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (a) of this subsection, which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premium, as defined in KRS 342.0011 of every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(d) 1. The assessment rate calculated to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) under paragraph (b) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (b) of this subsection which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premiums, as defined in KRS 342.0011 by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(e) On or before December 1 of 1994 and 1995, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the special fund assessment rates established in this subsection which shall become effective on January 1, 1995, and January 1, 1996, respectively, unless modified by the General Assembly. The payment schedules and other matters relating to the payment of the special fund assessments required pursuant to this section shall apply to the assessment rates and amounts required under this subsection.~~]

(1) ***(a)***[~~(f)~~] For calendar year 1997 and for each calendar year thereafter, ***for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk***[~~the assessment rates and amounts contained in the provisions of subsections (1) and (2) of this section shall apply~~].

(b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

(c) In addition to the assessment imposed in paragraphs (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars ($19,000,000) in coal severance

tax revenues levied under KRS 143.020 to the benefit reserve fund within the Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars ($19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars ($4,750,000).

(d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.

(2)[~~(4)~~] These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. ***Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service.*** Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(3)[~~(5)~~] The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

(4)[~~(6)~~] A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(5)[~~(7)~~] The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(6)[~~(8)~~] Each self-insured employer, group self-insurer or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(7)[~~(9)~~] The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(8)[~~(10)~~] The fund heretofore designated as the subsequent claim fund is abolished and there is substituted therefor the special fund as set out by this section and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

[~~(11) Notwithstanding any other provision of this section or this chapter, or the Kentucky Revised Statutes, generally, the assessment rates for the special fund, as determined by this section, which were in force and effect on January 1, 1990, shall continue in force and effect until December 1, 1991, and the total amount of funds collected pursuant to the assessment rates shall not be limited to the provisions of this section.~~]

(9)[~~(12)~~] Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received after December 31, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 4. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386***, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities***;

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in ***this chapter***~~[KRS 342.122]~~;

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in ***this chapter***~~[KRS 342.122]~~; and

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

(c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

(d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

(e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

(f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

(5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 5. KRS 342.125 is amended to read as follows:

(1) ***In claims where an award or order is entered under KRS 342.730(1)(a) or (b) and upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order on any of the following grounds:***

(a) Fraud;

(b) Newly-discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) A change of occupational disability.

(2) In claims where an award or order is entered under KRS 342.730(1)(c) or (d) and upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order upon any of the following grounds:

(a) Fraud;

(b) Newly-discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) A change of medical condition as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

(3) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(4) Except for reopening solely for determination of the compensability of medical expenses, no claim shall be reopened more than four (4) years following the date of the last payment under the original award or order granting or denying benefits, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party. There shall be no time limitation within which to reopen a catastrophic injury.

(5) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the administrative law judge[~~In claims where an award or order is entered pursuant to KRS 342.730(1)(a) or (1)(b) and upon its own motion or upon the application of any party and a showing of change of occupational disability, mistake or fraud, or newly-discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. In claims where an award or order is entered pursuant to KRS 342.730(1)(c) or (d) and upon its own motion or upon the application of any party and a showing of change of medical condition, mistake, or fraud, or newly-discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or the administrative law judge may change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. Any final award increasing or diminishing benefits shall require a showing of a change in occupational disability. Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder. The employer shall not suspend the payment of benefits during the pendency of any reopening procedures~~].

(6)[~~(2)~~] (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis ***and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease***, the administrative law judge may review an award ***or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732***[~~of a retraining incentive benefit because of the diagnosis, and upon a finding of respiratory impairment due to that pneumoconiosis shall make an award for benefits as provided in KRS 342.732. Such a reopening may also occur upon a showing of progression of respiratory impairment in a claim for which benefits were previously awarded under the provisions of KRS 342.732~~]. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings. ***No party may file a motion to reopen within two (2) years of the original award or order granting or denying benefits or within two (2) years of any previous motion to reopen, and no claim may be reopened more than four (4) years following the original award or order granting or denying benefits.***

(b) Benefits awarded as a result of a review under this subsection shall be reduced[~~ by the amount of retraining~~

~~incentive benefits previously awarded and, if applicable, also~~] by the amount of ***retraining incentive benefits or*** income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.

(7)[~~(3)~~] In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.

(8)[~~(4)~~] Where an agreement has become an award by approval of the administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

(9) The time limitation prescribed in this section shall apply to all claims for injuries incurred after the effective date of this Act.

Section 6. KRS 342.213 is amended to read as follows:

(1) The Governor shall make all appointments to the board, appoint the administrative law judges, and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him by the Workers' Compensation Nominating Commission.

(2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:

   (a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.

   (b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

      2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.

      3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

   (c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.

   (d) The members shall annually select a chairman of the nominating commission.

(3) The Governor shall appoint the administrative law judges in accordance with the provisions of KRS 342.230 from a list of names submitted by the Workers' Compensation Nominating Commission. The list shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.230. The administrative law judges shall be subject to Senate confirmation in accordance with KRS 11.160.

(4) The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.

(5) (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than ***sixty (60)***[~~ninety (90)~~] days after a vacancy occurs.

   (b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.

(6) The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be

reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars ($100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

Section 7. KRS 342.215 is amended to read as follows:

(1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.

(2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.

(3) Each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who[~~ has resigned or~~] has been removed from his position prior to the expiration of his term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) Members of the Workers' Compensation Board and the administrative law judges shall be members of the Kentucky Employees Retirement System.

Section 8. KRS 342.228 is amended to read as follows:

(1) The Department of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department shall be administered by a commissioner appointed by the Governor. The Governor shall select the commissioner from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.

(2) The commissioner shall[~~ be an attorney and shall~~] have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

Section 9. KRS 342.230 is amended to read as follows:

(1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, administrative law judges, and board members, shall be members of the classified service.

(2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges, and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board,[~~ and~~] the administrative law judges; annually report the activities of the board,[~~ and~~] administrative law judges, to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.

(3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than sixteen (16) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, ***and***[~~or~~] extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. The Governor shall appoint the administrative law judges from a list of three (3) names for each administrative law judge position submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213 and for this purpose only, a member of the Workers' Compensation Board shall serve as an ex officio member of the nominating commission. Each administrative law judge may be employed for additional terms of four (4) years with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting

the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

(4) To ensure that the administrative law judges perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.

(5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge. A member of the board or an administrative law judge may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.

(6) Any vacancy in the term of an administrative law judge, which occurs prior to the expiration of the term, shall be filled by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.

(7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end. On January 1, 1998, the Governor shall make four (4) year appointments to fill these positions.

(b) Effective at 12 midnight, December 31, 1995, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, 1996, the Governor shall make four (4) year appointments to fill these positions.

(c) On January 1, 1996, and January 1, 1998, as provided in paragraphs (a) and (b) of this subsection, and every fourth year thereafter, administrative law judges shall be appointed by the Governor for four (4) year terms and confirmed by the Senate in accordance with KRS 11.160. Confirmation hearings for administrative law judges shall be completed by the end of the regular session every four (4) years thereafter beginning with the 1996 Regular Session. Vacancies shall be filled in accordance with subsection (6) of this section.

(8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those set forth in this section for administrative law judges, and to be subject to removal for the same reasons. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, ***and*** providing educational opportunities for the administrative law judges, and supervising the work of the employees of the Department of Workers' Claims who provide staff support for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional ***three***[~~one~~] thousand dollars ***($3,000)***[~~($1,000)~~] per year. The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

Section 10. KRS 342.265 is amended to read as follows:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement ***signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the administrative law judge. Upon claims settled after the effective date of this Act, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the special fund mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.***

(2) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after the effective date of this Act, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 1998, the commissioner shall fix the discount rate to be utilized in the succeeding year based upon the interest rate paid upon ten (10) year United States Treasury Notes as of July 1 of the

preceding year.

(3) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay[~~shall be filed with the administrative law judge, and, if approved by him, shall be enforceable as provided in KRS 342.305. In all cases where all parties have not joined in the settlement agreement, the administrative law judge shall not approve the agreement unless the agreement certifies that the party not participating in the settlement has received a copy of the settlement agreement at least ten (10) days prior to submission of the agreement for approval. Nothing herein shall prevent the voluntary payment of compensation in the amounts and for the periods prescribed in this chapter without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with the administrative law judge and approved by the administrative law judge in accordance with this section. No limitations of time shall begin to run until the date upon which the agreement is filed with and approved by the administrative law judge~~].

Section 11. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application ***for resolution of claim***[~~to the commissioner for a hearing in regard to the matter at issue and for a ruling thereon~~]. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made.

(2) ***Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an administrative law judge for benefit review. The administrative law judge shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim***[~~Except with respect to uncontested claims for retraining incentive benefits by reason of occupational pneumoconiosis related to exposure to coal dust, or for disability or death by reason of occupational diseases, within thirty (30) days after the application has been received the commissioner shall set the date for a prehearing conference, to be held as soon as practicable in view of the matter involved, and shall notify the parties at issue of the time and place of the prehearing conference~~].

(3) ***(a) The administrative law judge shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, at a location convenient to the place where the employee resides, if that proceeding is held within the boundaries of the Commonwealth, or to submit medical reports and other information, or the administrative law judge may refer the employee for medical evaluation.***

(b) If an administrative law judge determines in his discretion that a pending claim presents factual issues best resolved through hearing before an administrative law judge, the administrative law judge may enter an order referring the claim to the chief administrative law judge for transfer to another administrative law judge for further proceedings.[~~The prehearing conference shall be at or convenient to the place where the employee resides, provided that such prehearing conference shall be held within the boundaries of the Commonwealth. At the prehearing conference, an administrative law judge shall confer informally with the parties at issue and their counsel, if any, for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposal of the case. If agreement upon any matter is reached, the administrative law judge shall write a memorandum setting forth the matters agreed upon. The administrative law judge and all parties shall sign the memorandum, and the administrative law judge shall file it with the commissioner. Once filed, the memorandum shall become a part of the record~~].

(4) ***Except where compelling circumstances justify delay and except as provided in subsection (3)(b) of this section, the administrative law judge shall render a written determination upon all matters at issue within ninety (90) days of the assignment of the claim. Through written order, the administrative law judge may grant or deny any benefit afforded by this chapter, including interlocutory relief***[~~If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive~~].

(5) ***Unless timely appeal is filed as set forth in KRS 342.275, the written determination of the administrative law judge shall be a final order enforceable under the provisions of KRS 342.305***[~~An application for adjustment of claim shall be held in abeyance by the administrative law judge during any period voluntary payments of compensation are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle him, unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay~~].

(6) Within one hundred twenty (120) days of the effective date of this Act, the commissioner shall promulgate

administrative regulations establishing procedures for the resolution of claims, which shall include benefit review. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all claims filed after the effective date of the regulations.

Section 12. KRS 342.275 is amended to read as follows:

[~~In any claim in which settlement is not reached at the prehearing conference, the administrative law judge shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, except that the conference shall be held within the boundaries of the Commonwealth.~~]The administrative law judge may grant continuances according to criteria established in administrative regulations promulgated by the commissioner.[~~ The commissioner shall notify the parties at issue of the time and place of the hearing.~~] The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless ***extension is*** mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 13. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.[~~ The failure to file a petition for reconsideration shall not preclude an appeal on any issue.~~]

Section 14. KRS 342.316 is amended to read as follows:

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator[~~. Said employer shall have the right to contribution from each previous employer, as determined in an independent civil action, wherein the employee was similarly exposed to the hazard of said occupational disease, in a sum equal to the ratio that each exposure employment time bears to the total exposure employment time, except as otherwise provided in paragraph (a) of subsection (10) of this section~~]; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later[~~, except that the time of the beginning of retraining incentive benefits awarded under KRS 342.732 shall be the date the award for those benefits by the administrative law judge becomes final~~].

(2)[~~(a)~~] The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur***.***[~~;~~]

(3) [~~(b) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to~~] filing ***occupational disease***[~~of~~] claims shall be as follows:

(a)[~~1. a.~~] The application ***for resolution of claim*** shall set forth the complete work history of the ***employee***[~~applicant~~] with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least ***one (1)***[~~two (2)~~] written medical ***report***[~~reports~~] supporting his claim. ***This***[~~These~~] medical ***report***[~~reports~~] shall be made on the basis of[~~ comprehensive~~] clinical ***or X-ray examination***[~~ examinations~~] performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The ***report***[~~reports~~] shall be made by ***a*** duly-licensed ***physician***[~~physicians~~]. The commissioner shall promulgate administrative regulations which prescribe the format of the medical ***report***[~~reports~~] required by this section and the manner in which the ***report***[~~reports~~] shall be completed.

1.[~~b.~~] For coal-related occupational pneumoconiosis claims, each clinical examination shall include ***a*** chest X-ray ***examination as well as***[~~examinations and~~] spirometric tests ***when pulmonary dysfunction is alleged***.

2.[~~c.~~] For other compensable occupational pneumoconiosis claims, each clinical examination shall include ***a chest*** X-ray ***examination***[~~examinations~~] and appropriate pulmonary function tests.

(b)[~~2.~~] To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust, shall comply with accepted medical standards as follows:

1.[~~a.~~] Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

2.[~~b.~~] Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of [~~subsection (2)(b) of~~]this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. [~~(c) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to the~~] determination of ***occupational disease*** claims shall be as follows:

a.[~~1.~~] Immediately upon receipt of ***an application for resolution***[~~said application for adjustment~~] of claim, the commissioner shall notify the ***responsible***[~~affected~~] employer,[~~ the special fund,~~] and ***all***[~~any~~] other interested ***parties***[~~party of such claim~~] and shall furnish them with a full and complete copy of the ***application.***[~~claim,~~]

b. The commissioner shall assign the claim to an administrative law judge and the administrative law judge may refer the employee to such physician or medical facility as the administrative law judge may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the administrative law judge for examination within two (2) years following any prior referral for examination for the same disease.

c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.

d. The administrative law judge shall conduct such proceedings as are necessary to resolve the claim, and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.

e. Unless a voluntary settlement is reached by the parties, the administrative law judge shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.

5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.275.

[~~2. Upon receipt of notice of the claim, the employer, the special fund, and any other interested party shall~~

~~have the right to have the claimant examined by competent medical experts, at their expense, including a reasonable sum for travel. Within thirty (30) days of any such examination, the claimant or his representative shall be furnished a copy of said medical report by the party requesting such report. Also, the employer, the special fund, or any other party to the claim shall have the right to have the claimant evaluated by vocational experts or institutions, at the employer's expense, including a reasonable sum for travel. Within thirty (30) days of any vocational examination, the claimant or his representative, shall be furnished a copy of that vocational report by the party requesting that report; and~~

~~3. Within sixty (60) days of the receipt of the claim, the employer, the special fund, and any other interested party shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, then an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall set a date for a prehearing conference and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the commissioner shall be followed. Upon request of an interested party and a showing of good cause, the administrative law judge may extend, one (1) time, the time period for filing a notice of resistance as prescribed in this subparagraph, but the extension shall not exceed thirty (30) days.~~

~~(d) For claims filed under subsection (1)(a) of KRS 342.732, the procedure shall be as follows:~~

~~1. For retraining incentive benefits under KRS 342.732, the claimant shall file two (2) X-rays and the reports thereof which shall conform to the standard for X-rays contained in this subsection.~~

~~2. The commissioner shall notify the affected employer of the claim and shall furnish him with a full and complete copy of the claim.~~

~~3. Within sixty (60) days of the receipt of the claim, the employer shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall notify the affected employee thereof. In litigated claims, the regular procedures prescribed by the commissioner shall be followed.~~]

(4)[~~(3)~~] (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or, if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income[~~ or retraining incentive~~] benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(5)[~~(4)~~] The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:

(a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and

(c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section***, except as provided in KRS 342.750(6)***.

(6)[~~(5)~~] If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

(7)[~~(6)~~] No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(8)[~~(7)~~] No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.

(9)[~~(8)~~] Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard by the administrative law judge when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

(10)[~~(9)~~] When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided in this chapter.

(11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in Section 31 of this Act and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.

(b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.

(12) A concluded claim for benefits by reason of contraction of coal workers pneumoconiosis shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

[~~(10) (a) Except as provided in paragraph (c) of this subsection, the employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employee was last exposed to the hazard of that occupational disease. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the special fund for all claims filed prior to January 1, 1973; and seventy-five percent (75%) shall be paid by the special fund and twenty-five percent (25%) by the employer for all claims filed thereafter. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the special fund, and the employer shall be liable for sixty percent (60%) of the compensation due and the special fund shall be liable for forty percent (40%) of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the special fund under this section, all of the compensation awarded shall be paid pursuant to KRS 342.120 and under such regulations as the commissioner may provide for such purpose; and~~

~~(b) In all claims for compensation partially payable by the special fund, the Director of the Division of the Special Fund shall be designated as codefendant.~~

~~(c) The employer in whose employment the employee was last exposed to the hazard of the disease shall alone be liable for payment of retraining incentive benefits awarded under KRS 342.732.~~]

Section 15. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge pursuant to the statutes and administrative regulations.

(2) Attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) Two thousand five hundred dollars ($2,500) for services performed up to and including the date of the written benefit review determination. This fee shall be paid by the employee from the proceeds of the award or settlement.

(b) For further proceedings after the benefit review determination, a fee to be fixed by the administrative law judge upon consideration of the extent, quality and complexity of services not to exceed twenty percent (20%) of the first twenty-five thousand dollars ($25,000) of any income benefits awarded, ten percent (10%) of the next fifteen thousand dollars ($15,000) of income benefits, and five percent (5%) of the remainder of the income benefits awarded and not to exceed in all ten thousand dollars ($10,000). This fee shall be paid by the employee from the proceeds of the award or settlement.

(3) In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and[~~In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable~~] in the case of death,[~~ and then by the use of~~] the Remarriage Tables of the Dutch Royal Insurance Institute. ***An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court***[~~However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000)~~].[~~ The administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~]. The date of injury or last exposure shall control the applicable maximum attorney's fee[~~, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~].

(4)[~~(2)~~] No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the last appealable order[~~ of the administrative law judge~~]. The attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The administrative law judge, upon request of the claimant, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(5)[~~(3)~~] ***At the commencement of the attorney-client relationship,*** the attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(6)[~~(4)~~] The General Assembly declares that by the enactment of KRS 342.316***(3)***[~~(2)(b)~~], it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(7)[~~(5) The administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated~~

~~below are followed:~~

~~(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).~~

~~(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.~~

~~(6) (a)~~] In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the administrative law judge ***subject to the limits set forth in subsection (2) of this section***. In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection ***(3)***[~~(1)~~] of this section. ***If no additional amount is recovered upon reopening, no attorney's fee shall be awarded***[

~~(b) Thereafter, the administrative law judge shall fix the attorney's fee~~]. No[~~ attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any~~] attorney's fee ***shall*** be allowed or approved exceeding the amounts provided in subsection ***(2)(b)***[~~(1)~~] of this section applicable to any additional amount recovered.[~~ If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee.~~]

(8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the same limitations as to maximum fees at each level except that fees for representation before administrative law judges shall not exceed ten thousand dollars ($10,000) and fees for representing employers shall not be dependent upon the result achieved. Fees for legal services in presenting a claim for reimbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars ($1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

Section 16. KRS 342.335 is amended to read as follows:

(1) No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to ***delay or*** omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, ***which may affect the amount of money received or not paid,*** including***:***

(a) Misrepresentations of prior loss experience, hazards, classifications, payrolls, or other acts that are designed to cause a reduction in an employer's insurance premium;

(b) Prepare, make or present a false, fraudulent, or misleading statement, oral or written, for the purpose of obtaining benefits or compensation;

(c) Prepare, make, or present false or counterfeit insurance policies, certificates of insurance, insurance binders, or other documents including those relating to self-insurance, purporting to evidence with this chapter as to security; and

(d) Prepare, make or present false billing for services rendered or products delivered;

[~~ misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter,~~]shall be subject to the civil or criminal penalties, or both, imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

(3) All workers' compensation fraud investigations, except for claimant fraud investigations conducted by the Division of Special Fund, shall be conducted by the Department of ***Workers' Claims and appropriate staff shall be added to aggressively perform that function. Any report of alleged violations of subsections (1) and (2) of this section received by the Department of Insurance shall be forwarded to the Department of Workers' Claims for appropriate action. Investigators within the department shall be vested with the following power and authority:***

(a) General police powers including the privileges and immunities of sheriffs, and their jurisdiction shall be coextensive with the state;

(b) Administer oaths and affirmations;

(c) Collect evidence; and

(d) Make arrests for criminal violations of this chapter established as result of its investigations.

(4) The commissioner shall have the power to issue subpoenas to order the attendance of witnesses or proffering of information and documentation relating to any alleged violation of sections (1) or (2) of this section.

(5) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies to any transaction arising from activities relating to this chapter.

~~[Insurance or the Attorney General.]~~

SECTION 17. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that the establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation, to make provisions for the general welfare of workers and their dependents, to relieve the consequences of any industrial injury or death, and to secure the payment of workers' compensation benefits provided by this chapter.

(2) The General Assembly further finds and declares that provision must be made for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet obligations because of insolvency. It is for that purpose that the General Assembly establishes mechanisms requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty associations, one (1) of whose members shall be composed of individually self-insured employers excluding individually self-insured coal employers and public sector employers; one (1) shall be composed of group self-insurers created pursuant to KRS 342.350(4); and one (1) shall be composed of individually self-insured coal operators.

SECTION 18. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

As used in Sections 17 to 23 of this Act, unless the context requires otherwise:

(1) "Insolvent self-insurer" means either an individual self-insured employer or a group self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the commissioner, or who has failed to provide compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner.

(2) "Member" means a self-insured employer or self-insurance group that participates in a guaranty fund created pursuant to Sections 17 to 23 of this Act.

(3) "Guaranty fund" means one of the three (3) guaranty funds established pursuant to Sections 17 to 23 of this Act.

(4) "Directors" means the board of directors of a guaranty fund.

(5) "Certificate of default" means a notice issued by the commissioner based upon a finding that a self-insured employer or self-insurance group has failed to pay compensation required by this chapter.

SECTION 19. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, public sector self-insured employers or self-insurance groups are specifically exempted from the provisions of Sections 17 to 23 of this Act.

SECTION 20. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each noncoal, individually self-insured employer who has qualified and been certified by the commissioner as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The commissioner shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.

(2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insurance groups or associations established under KRS 342.350(4), to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each self-insurance group or association that is authorized to self-insure and certified by the commissioner to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The commissioner shall revoke any authorization and certificate to self-insure of any self-insurance group or association for failure to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection .

(3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund

to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insurance group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance or reinsurance, required by this chapter. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a "plan of operation" pursuant to administrative regulations promulgated by the commissioner.

(5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

(6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insurance group or association. In addition, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.

(7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance, and borrow funds as it deems necessary for the protection of the members and their employees.

(8) Security called by the commissioner and dispersed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly, or any other state agency.

(9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.

(10) No liability shall lie, whether at law or in equity, against any director, agent or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

SECTION 21. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.

(2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the department of workers' claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.

(3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

(4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, provided that no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars ($1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and, three-fourths of one percent (0.75%)of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

(5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars ($500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars ($500,000) or such other amount not to exceed, in any event, one million dollars ($1,000,000) based upon a maximum annual assessment for each guaranty fund.

(6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members.

(7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.

(8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

SECTION 22. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Each guaranty fund, by making payment of compensation under this chapter, has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.

(2) Notwithstanding subsection (1) of this section, each guaranty fund shall not be liable for the payment of any penalties or interest assessed for any act or omission on the part of any person, including but not limited to the penalties provided in this chapter.

(3) Each guaranty fund shall be a party in interest in all proceedings involving compensation claims against an insolvent member whose compensation obligations have been paid or assumed by the guaranty fund. The guaranty fund shall have the same rights and defenses as the insolvent individual self-insurer.

(4) Each guaranty fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by each guaranty fund, including reasonable administrative and legal costs.

(5) Each guaranty fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the guaranty fund, including but not limited to any excess insurance carrier of the insolvent member.

SECTION 23. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner and to each member.

(2) Each guaranty fund shall be established on March 1, 1997.

(3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

Section 24. KRS 342.610 is amended to read as follows:

(1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.

(2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another (a) to have work performed consisting of the removal, excavation or drilling of soil, rock or mineral, or the cutting or removal of timber from land, or (b) to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of such person, shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

(3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by[~~ his~~] intoxication***, the influence of an illegal drug or drugs,*** or by his willful intention to injure or kill himself or another.

(4) If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.

(5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage for all persons employed or engaged to perform services on the site of the construction project for which the permit is to be issued. A property owner who intends to perform all of the construction work himself or herself or pursuant to the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter shall so certify to the local building official, in writing and on a form prescribed by the commissioner, in lieu of providing proof of workers' compensation coverage.

Section 25. KRS 342.640 is amended to read as follows:

(1) The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(a)[~~(1)~~] Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(b)[~~(2)~~] Every executive officer of a corporation;

(c)[~~(3)~~]Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire or police department shall be deemed for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled volunteer member or trainee of the civil defense corps of this state, as established under KRS Chapter 39, shall be deemed for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed for the purposes of this chapter to be in the employment of this state;

(d)[~~(4)~~] Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(e)[~~(5)~~]Subject to the provisions in ***paragraph (d)***[~~subsection (4)~~] of this ***subsection***[~~section~~], every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

(2) Every employer subject to this chapter shall, at each job site in a location accessible to all employees, conspicuously post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner. The format and contents of the notice shall be established by the commissioner through administrative regulation and copies shall be provided to the employer by its insurance carrier.

Section 26. KRS 342.680 is amended to read as follows:

(1) In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify as confirmed by competent medical evidence and where there is unrebutted prima facie evidence that indicates that the injury was work related, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was work related, that sufficient notice of the injury has been given, and that the injury or death was not proximately caused by the employee's intoxication or by his willful intention to injure or kill himself or another.

(2) There shall exist a rebuttable presumption that the heart or lung disease in a firefighter, whether he is a regular-call volunteer or a member of a fire department, is occupationally related. However, the firefighter shall have the benefit of this rebuttable presumption only if there is on record reasonable medical evidence that he was free of the heart or lung disease at the beginning of his employment.

Section 27. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For ***permanent*** total disability due to a work-related injury or occupational disease, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related disability shall not be considered in determining whether the employee is totally disabled for purposes of this subsection ***and shall not extend the maximum period for payment of disability benefits***.

(b) For permanent[~~,~~] partial disability, where an employee returns to work at a wage equal to or greater than the employee's preinjury wage, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by ***the***[~~this~~] percentage of impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***times the factor set forth in the table that follows:***[~~ unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section.~~]

AMA Impairment	***Factor***
0 to 5%	***1.00***
6 to 10%	***1.25***
11 to 15%	***1.50***
16 to 20%	***1.75***
21 to 25%	***2.00***
26 to 30%	***2.25***
31% and above	***2.50***

[~~The period of ~~]Disability under this paragraph for nonwork-related disabilities ***and conditions previously compensated under this chapter*** shall not extend the maximum period ***or the amount*** of ***partial*** disability[~~ under this paragraph~~]. ***Impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in Section 35 of this Act shall not be considered in determining the extent of disability or the duration of payments due under this subsection.*** Any temporary ***partial or temporary*** total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(d) For permanent[~~,~~] partial disability, if an employee sustains[~~ impairment or~~] disability[~~ in excess~~] of fifty percent (50%) ***or less*** as a result of a work-related injury[~~ or occupational disease and prior work-related active disability~~] the compensable permanent partial disability period shall[~~ then~~] be ***four hundred twenty-five (425) weeks, and if the disability is greater than fifty percent (50%), the compensable permanent partial disability period shall be*** five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. ***Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and in no event shall exceed seventy-five percent (75%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in subsection (1)(b) of this section would yield a greater percentage of disability.***

(e) For temporary partial disability, when the employee has returned to work pursuant to an employer program to accommodate the employee's impairment with work encompassing lesser exertional requirements or shorter working days, and lower earnings than the employee's average weekly wage earned, the insurance carrier shall pay an amount equal to eighty-five percent (85%) of the employee's average weekly wage not to exceed one hundred percent (100%) of the state average wage less the actual earnings of the employee while in the accommodated duty program. Temporary partial disability benefits shall be paid for a period not to exceed fifty-two (52) weeks. An employee's refusal to accept accommodated duty employment within reasonably imposed medical restrictions shall result in a forfeiture of income benefits during the period of refusal. Disputes concerning a purported failure of an employee to accept suitable accommodated duty employment shall be resolved by an administrative law judge in expedited proceedings[~~Nonwork related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection~~].

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) ***All income benefits payable under this chapter shall terminate five (5) years from the date upon which the employee qualifies for normal old age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner, all income benefits payable under this chapter to spouses and dependents shall terminate five (5) years from the date upon which the spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old age Social Security retirement benefits***[~~If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday~~].

(5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.

Section 28. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits[~~ and retraining incentive benefits~~] for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X-rays and reports of the X-rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only ***income***[~~retraining incentive~~] benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not ***less than ten (10) weeks and not*** to exceed two hundred and eight (208) weeks. These benefits may be[~~ paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be~~] collected semimonthly as provided in KRS 342.040.[~~ While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved under administrative regulations to be promulgated by the commissioner, benefits awarded under this paragraph shall be paid directly to the institution conducting the training or education program on a semimonthly basis. The benefit shall not be paid for a period in which the employee ceases to participate in the program.~~] In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) ***If the administrative law judge finds that any employee has a radiographic classification of category 2/1, 2/2, or 2/3 based on the latest ILO Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) x-rays and reports of the x-rays which conform to the standards for x-rays contained in KRS 342.316(2), he shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but no more than seventy-five percent (75%) of the state average as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period of not less than two hundred eight (208) weeks but not to exceed three hundred twenty-five (325) weeks. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance of processing of coal.***

(c) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1,[~~ or~~]

1/2, ***2/1, 2/2, or 2/3*** based on the latest ILO International Classification of Radiographics, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association, there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee has an occupational disability rating of seventy-five percent (75%) resulting from exposure to coal dust and the administrative law judge shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of seventy-five (75%) but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period ***of not less than three hundred twenty-five (325) weeks, but*** not to exceed four hundred and twenty-five (425) weeks, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d)[~~(c)~~]If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1,[~~ or~~] 1/2, ***2/1, 2/2, or 2/3,*** based on the latest ILO International Classification of Radiographics, ***resulting from exposure to coal dust,*** and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ***seventy-five***[~~one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(e)[~~(d)~~]If the administrative law judge finds that an employee has occupational pneumoconiosis with a radiographic classification of category[~~ 2/1, 2/2, 2/3,~~] 3/2, 3/3, or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, ***resulting from exposure to coal dust,*** there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ***seventy-five***[~~one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the ***most reliable***[~~largest~~] forced vital capacity (FVC) value or the ***most reliable*** largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

(4) In no event shall income benefits awarded under paragraphs (a)***,***[~~ or~~] (b)***, or (c)*** of subsection (1) of this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

(5) The employer or employers responsible for the payment of benefits awarded under this section shall pay those benefits for which they are responsible under KRS 342.316.

Section 29. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

(1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.

(d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, 25 percent.

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.

(6) ***In addition to other benefits as provided by this chapter,*** if death occurs as a direct result of a work related injury,[~~and the deceased has no statutory dependents, as determined by this section,~~] a lump-sum payment of ***twenty-five thousand***

dollars ($25,000)[~~$10,000~~] shall be ***made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be*** paid[~~ to his estate, in addition to the amount provided for in KRS 342.720; provided, however, that the lump sum payment shall be reduced by any income benefits previously paid on account of that injury~~].

(7) All benefits awarded pursuant to this section***, other than those provided in subsection (6) of this section,*** shall be subject to the limitations contained in KRS 342.730(4).

Section 30. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.

(2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the administrative law judge***,*** or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of ***all*** the amounts authorized to be paid therefrom under the authority of this subsection ***including reimbursement of the special fund of all liability apportioned to it*** and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. ***This provision shall apply to all pending claims upon which a final order has not been entered.***

(5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.

(6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

SECTION 31. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Division of the Kentucky Coal Workers' Pneumoconiosis Fund in the Department of Workplace Standards which shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration and legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.

(3) The Kentucky coal workers' pneumoconiosis fund shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after the effective date of this Act. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the coal workers' pneumoconiosis fund is established under subsection (4) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.

(4) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.

(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents ($0.025) per ton is hereby

imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.

(c) As of September 1, 1997, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than December 1 of the year preceding the rate change.

(5) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.

(6) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

(7) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

SECTION 32. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner or his designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds or self-insured groups and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(i).

(2) All individual self-insured employers and self-insurance groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year. For self-insurance groups, the financial statement shall include an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods used.

(3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioners' designees, and expert assistance as necessarily incurred in the examination.

(4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

(5) Not less often than biennially the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of self-insureds so that payment of liabilities to workers under this chapter is assured.

SECTION 33. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Employer leasing company" or "lessor" means an entity that places employees in other businesses pursuant

to an employee leasing arrangement.

(b) "Lessee" means an employer which obtains all or part of its workforce from another entity through an employee leasing arrangement.

(c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.

(d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employer responsibilities among two (2) or more entities. For purposes of this rule, employee leasing arrangement does not include arrangements to provide temporary workers.

(e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short term workload conditions, not to exceed ninety (90) calendar days. For temporary workers, the leasing company shall be deemed the employer and shall be subject to the provisions of this chapter. The lessee that leases employees from a leasing company shall be deemed the employer unless the leased employee is a temporary worker.

(2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.

(3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

(4) A lessee shall fulfill its statutory responsibility to secure benefits under the Workers' Compensation Act by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. The exposure and experience of the lessee shall be used in determining the premium for such policy and shall include coverage for all leased employees.

SECTION 34. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information pursuant to KRS 342.335 or requested by the commissioner or his authorized representative. No civil cause of action of any nature shall arise against the person:

(a) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from law enforcement officials, their agents, or employees;

(b) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from other persons; or

(c) For any information furnished in reports to the commissioner.

(2) The commissioner or any employee or agent of the Department of Workers' Claims shall not be subject to civil liability for libel, slander, or any other relevant tort relating to the execution of their duties pursuant to KRS 342.335 and KRS 342.990. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the Department of Workers' Claims or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) KRS 342.335 and KRS 342.990 shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

(4) The papers, documents, reports, or evidence relative to the information or reports received under KRS 342.335 shall not be subject to public inspection for so long as the commissioner deems reasonably necessary for the completion of any investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to any investigation shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of violations of KRS 342.335.

SECTION 35. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment the extent of binaural hearing impairment shall be determined under the latest available edition of the American Medical Association "Guides to the Evaluation of

Permanent Impairment."

(2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730 except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than six percent (6%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.

(3) The commissioner shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.

(4) When audiograms and other testing reveals a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace there shall be a rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

Section 36. KRS 342.803 is amended to read as follows:

(1) The ***Kentucky*** Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of[~~ Subtitle 24 and other provisions of~~] KRS Chapter 304 applicable to domestic mutual insurance companies unless otherwise provided or exempted in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

(2) Except for initial funding for start-up, the authority shall be entirely self-supporting.

(3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4) [~~On or before September 1, 1995, ~~]The authority shall[~~ begin to~~] provide coverage and issue policies[~~, as provided in subsection (1) of this section,~~] as an insurer in the voluntary market and as ***an insurer of last resort***[~~a residual market mechanism~~].

Section 37. KRS 342.805 is amended to read as follows:

As used in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~], unless the context otherwise requires:

(1) "Authority" means the ***Kentucky*** Employers' Mutual Insurance Authority.

(2) "Board" means the board of directors of the authority.

(3) ***"Insurer of last resort" means an entity that provides workers' compensation coverage to any and all employers who comply with the provisions of KRS 342.801 to 342.843 for their business in and incidental to the Commonwealth.***

(4) "Manager" means the manager of the authority.

(5)[~~(4)~~] "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage under this authority.

Section 38. KRS 342.811 is amended to read as follows:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to[~~ Subtitle 24 of~~] KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

(1) Sue or be sued;

(2) Hire a manager to administer the authority;

(3) Adopt a corporate seal;

(4) Develop bylaws for the operation of the authority;

(5) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;

(6) Examine and adopt an annual operating budget for the authority;

(7) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;

(8) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;

(9) Develop broad policy for the long-term operation of the authority consistent with its mission and fiduciary responsibility;

(10) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A;

(11) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that

describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness***;***~~[.]~~

(12) ***Pursuant to***~~[Subject to Subtitle 13 of]~~ KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;

(13) Pursuant to KRS 342.823, assess policyholders~~[to cover its liabilities as provided in KRS 304.24-230]~~; and

(14) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843~~[and KRS 304.13-340]~~.

Section 39. KRS 342.817 is amended to read as follows:

(1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks ***for the authority***.

(2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the ***market of last resort***~~[residual market]~~ and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.

(3) Multitiered premium or rating plans may be developed to provide ***workers' compensation*** coverage to insureds ***in the Commonwealth***~~[in the residual market mechanism established by the authority, and who would not otherwise meet the underwriting standards required by the authority]~~.

(4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a ***market of last resort***~~[residual market mechanism]~~.

(5) The rates ***established***~~[developed]~~ by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.

(6) ***Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the insurance commissioner in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.***

(7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for ***eighty-four (84)***~~[thirty-six (36)]~~ months.

Section 40. KRS 342.823 is amended to read as follows:

(1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities ***except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners***~~[by the amount of future anticipated investment income]~~.

(2) The board shall submit an annual independently-audited ***financial statement***~~[report]~~ in accordance with procedures governing annual ***statements***~~[reports]~~ adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year. The ***statement***~~[report]~~ shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the co-chairs of the Legislative Research Commission. It shall indicate the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

(a) A summary of the prior quarterly reports required in KRS 342.821;

(b) An actuarial projection of solvency status for at least ten (10) years in the future; and

(c) Any recommendations pertaining to the same.

(3) If ***at any time*** the assets of the authority~~[at any time]~~ are less than its liabilities, the board ***may***~~[shall]~~ levy an assessment on its policyholders***. The board may***~~[and]~~ enforce payment of the assessment in the manner provided in Subtitle 24 of KRS Chapter 304.

Section 41. KRS 342.841 is amended to read as follows:

The ***board***~~[authority]~~ shall comply with KRS Chapter 61 in regard to open meetings and the conduct of ordinary business, except that proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth may be closed to the public. ***The authority shall act as any other domestic mutual insurance company with regard to all of its records. Any request for records shall be in writing. Any records***

requested shall be in pursuit of the investigation and the confidentiality of the information in the records shall be maintained.

SECTION 42. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of any other law notwithstanding, the Governor shall include in the budget recommendation for the executive branch and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly for the biennium period beginning July 1, 1998, and for each biennium thereafter, recommendations for appropriations as provided in subsection (1)(c) of Section 3 of this Act to be made by the General Assembly to the benefit reserve fund within the Workers' Compensation Funding Commission established by KRS Chapter 342.

(2) The amount to be recommended for appropriation to the benefit reserve fund within the Workers' Compensation Funding Commission shall be nineteen million dollars ($19,000,000) of the coal severance tax, levied under KRS 143.020, estimate for each fiscal year of the biennium.

Section 43. 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section I. Labor, at pages 1901 and 1902, is amended to read as follows:

I. LABOR

59. LABOR CABINET

a. General Administration and Support

	1996-97	1997-98
General Fund	485,900	503,800
Restricted Funds	***3,612,900***	***3,691,700***
~~[Restricted Funds~~	~~3,556,700~~	~~3,607,000]~~
Total	***4,098,800***	***4,195,500***
~~[Total~~	~~4,042,600~~	~~4,110,800]~~

b. Workplace Standards

	1996-97	1997-98
General Fund	1,660,700	1,730,600
Restricted Funds	***182,090,200***	***203,824,400***
~~[Restricted Funds~~	~~177,871,200~~	~~195,454,900]~~
Federal Funds	2,419,700	2,303,100
Total	***186,170,600***	***207,858,100***
~~[Total~~	~~181,951,600~~	~~199,488,600]~~

c. Workers Claims

	1996-97	1997-98
Restricted Funds	***12,180,000***	***15,273,700***
~~[Restricted Funds~~	~~10,159,800~~	~~10,614,200]~~

d. Kentucky Occupational Safety and Health Review Commission

	1996-97	1997-98
Restricted Funds	272,700	293,600
Federal Funds	169,700	161,200
Total	442,400	454,800

TOTAL - LABOR CABINET

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***198,155,800***	***223,083,400***
~~[Restricted Funds~~	~~191,860,400~~	~~209,969,700]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***202,891,800***	***227,782,100***
~~[TOTAL~~	~~196,596,400~~	~~214,668,400]~~

60. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	1996-97	1997-98
Restricted Funds	***202,665,200***	***227,588,900***
~~[Restricted Funds~~	~~196,369,800~~	~~214,475,200]~~

TOTAL - LABOR

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***400,821,000***	***450,672,300***
~~[Restricted Funds~~	~~388,230,200~~	~~424,444,900]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***405,557,000***	***455,371,000***
~~[TOTAL~~	~~392,966,200~~	~~429,143,600]~~

The credit provided for in subsection (1)(c) of Section 3 of this Act shall be made prior to the transfer to the Local Government Economic Assistance Fund required by 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operations, Item 12. Special Funds at pages 1876 and 1877, and notwithstanding KRS 42.4582. The appropriations to the Local Government Economic Assistance Fund and the Local Government Economic Development Fund contained in 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operation, Item 12. Special Funds, shall be adjusted accordingly. This Section of this Act prevails over any conflicting provision of 1996 Kentucky Acts Chapter 382, the 1996-98 State/Executive Branch Budget Memorandum.

Section 44. KRS 342.990 is amended to read as follows:

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

  (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

  (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

  (c) Any person who violates KRS 342.020(9), 342.035(2), KRS 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation.

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District and Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Except as provided in paragraph (d) of this subsection, a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a misdemeanor where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300), and shall be punished for each offense by:

1. Imprisonment for not more than one (1) year;

2. A fine of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. or 2. of this paragraph.

(d) Where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300), a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a felony and shall be punished for each offense by:

1. Imprisonment for not less than one (1) year nor more than five (5) years;

2. A fine of not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violations, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(e) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee

leasing arrangement or mechanism as defined in Section 33 of this Act for the purpose of depriving one or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium, shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred and eighty (180) days, or both, for each offense.

(f) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner, in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer, in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

SECTION 45. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Within sixty (60) days of the effective date of this Act, the licensed workers' compensation advisory organizations shall file with the commissioner an estimate of changes in prospective workers' compensation losses attributable to any net savings under this Act. Within sixty (60) days of receipt of the workers' compensation filing, the commissioner shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.

(2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under this Act for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the commissioner as provided in KRS 304.13-051(2).

(3) Unless the commissioner enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).

SECTION 46. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this chapter, the commissioner shall evaluate alternate methods of establishing workers' compensation insurance rates for employers in the construction industry and shall by administrative regulation prescribe that insurance carriers base their premium determination methodology for certain classifications of workers' compensation insurance on the aggregate number of hours worked by employees of the employers with specific Standard Industrial Classification Codes rather than upon the gross wages paid by the employer.

Section 47. KRS 304.13-161 is amended to read as follows:

(1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.

(2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the commissioner for further review of the application of the rating system. The commissioner shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The commissioner may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.

(3) Notwithstanding any provision of this chapter to the contrary, the commissioner shall require, as a condition of licensure to conduct or market workers' compensation insurance in the Commonwealth, each insurer or agent thereof to notify in writing each insured at the time a workers' compensation insurance policy is written, issued, or renewed on or after April 1, 1997, of the insured's rights afforded by this section. Failure to provide written notice to an insured shall be grounds to suspend or revoke a license to conduct or market workers' compensation insurance in the Commonwealth. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in a manner and format prescribed through administrative regulations promulgated by the commissioner.

(4) On each workers' compensation insurance policy issued or renewed on or after April 1, 1997, the workers' compensation insurer shall provide the policyholder with a written explanation of the following:

(a) The insured's experience modification factor and the data and methodology utilized in the calculation of the factor;

(b) The workers' compensation rating laws in easily understandable and nontechnical language; and

(c) The workers' compensation policyholder's rights under this subtitle to request and receive rating information from the commissioner.

Section 48. KRS 342.318 is amended to read as follows:

The provisions of KRS 342.316***(4)***[~~(3)~~] shall apply to employees' asbestos-related disease claims filed on or after July 15, 1986.

Section 49. KRS 342.329 is amended to read as follows:

(1) The commissioner shall establish ***a division of***[~~an~~] Ombudsman ***and Workers' Compensation Specialist Services***[~~program~~]. The functions of the ***division***[~~ombudsman~~] shall include:

(a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;

(b) Responding to inquiries and complaints relative to the workers' compensation program;

(c) Advising all parties of their rights and obligations under this chapter;[~~ and~~]

(d) ***Assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and***

(e) Performing other duties as required by the commissioner through administrative regulations promulgated by the commissioner.

(2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.

(3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.

(4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the ***division***[~~ombudsman program~~].

Section 50. KRS 393.082 is amended to read as follows:

(1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or commissioner's designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.

(3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.

(4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of

the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

(5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.

(6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.

(7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or commissioner's designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.

(8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.

(9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency or employee, beyond that expressly set forth in a comprehensive distribution plan.

(10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.

(11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.

(12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by[~~subsection (1) of~~] KRS 342.320, as well as the approval of the commissioner or the commissioner's designee.

(13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

Section 51. KRS 342.155 is amended to read as follows:

Whenever the administrative law judge considers it expedient, any lump sum which is paid as provided in ***this chapter***[~~KRS 342.150 hereof~~] shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties and liabilities of the trustee shall be determined by the general laws of this state.

Section 52. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to each employee subject to this chapter, except as otherwise provided in KRS 216.2960, 342.020, ***or*** 342.345[~~, or 342.352~~]. However, if specifically authorized by the commissioner, a separate insurance policy may be issued for a specified plant or work location if the liability of the employer under this chapter to each employee subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

Section 53. The following KRS sections are repealed:

342.1201 Findings and declarations relating to special fund assessments.

342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart -- Limit on special fund's liability for all other injury claims.

342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician -- Report -- Fees and expenses -- Decision of administrative law judge.

342.150 Lump-sum compensation -- When and how made.

342.352 Voluntary pilot programs for integrated management of employer's worker compensation and group health insurance claims -- Twenty-four hour coverage.

342.720 Burial expense.

Section 54. The General Assembly finds and declares that workers who incur injuries covered by KRS Chapter 342 are not assured that prescribed benefits will be promptly delivered, mechanisms designed to establish the long-term solvency of the special fund have failed to reduce its unfunded liability, and many of the Commonwealth's employers are placed at a competitive disadvantage due to the cost of securing workers' compensation insurance coverage. These circumstances threaten the vitality of the Commonwealth's economy and the jobs and well-being of its workforce. Whereas it is in the interest of all citizens that the provisions of this Act shall be implemented as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Committee on Appropriations and Revenue reported **HB 2** with the expression of opinion that the same should pass. Read at length for the first time and ordered placed in the Calendar.

HB 2, AN ACT making an appropriation to the Legislative Research Commission for expenses incurred in connection with the First Extraordinary Session of 1996 of the General Assembly, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. That there be appropriated from the General Fund, for payment of salaries and other expenses of the First Extraordinary Session of 1996 of the General Assembly, the sum of $30,000 per calendar day during the First Extraordinary Session of 1996.

Section 2. That there be appropriated from the General Fund, for payment of expenses incurred during the First Extraordinary Session of 1996 to the Legislative Research Commission, the sum of $3,000 per calendar day during the First Extraordinary Session of 1996.

Section 3. That there be transferred from the Monthly Expenses of Legislators' Account to the Legislative Session Fund the amount of $4,400 per calendar day of the First Extraordinary Session of 1996 to be used for necessary expenses during the Extraordinary Session.

Section 4. That there be appropriated from the General Fund to the Legislative Session Fund the sum of $15,000 to pay the cost of printing and binding the Acts and Journals of the First Extraordinary Session of 1996.

Section 5. That there be appropriated from the General Fund to the Legislative Session Fund the sum of $37,100 to pay the cost of expert testimony, legislator's travel, and stationery allowances for the First Extraordinary Session of 1996.

Section 6. Whereas the General Assembly is now in session, and it is necessary that funds be made available immediately, an emergency is declared to exist, and this Act shall become effective upon its passage and approval by the Governor or upon its otherwise becoming a law and shall be retroactive to include all calendar days of the First Extraordinary Session of 1996, beginning December 2, 1996.

Floor Amendments

Floor Amendment No. 3 to **HB 1**, by Representative Kerr:

On page 99, line 11, after "***(1)***" by deleting the rest of the line and all of lines 12 through 17, and "***(2)***" on line 18; and
on line 22, before "***For***" by starting a new paragraph and inserting "***(2)***"; and
on line 22, after "***include***" by inserting "***an annual report and***"; and
On page 100, by deleting all of lines 2 through 15.

Floor Amendment No. 1 to **HB 5**, by Representative Kerr:

On page 99, line 11, after "***(1)***" by deleting the rest of the line and all of lines 12 through 17, and "***(2)***" on line 18; and
on line 22, before "***For***" by starting a new paragraph and inserting "***(2)***"; and
on line 22, after "***include***" by inserting "***an annual report and***"; and
On page 100, by deleting all of lines 2 through 15.

Calendar

HB 1 taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Recess

Representative Stumbo moved to suspend the rules to allow the House to recess for a Committee on Rules meeting in the Speaker's Office. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order. Representative Stumbo moved that the rules be suspended to allow a report of the Committee on Rules. Agreed.

Report of Committees (Cont.)

The Committee on Rules reported the following Bill has been recommited:

Appropriations and Revenue: **HB 1**

Representative Stumbo moved that the rules be suspended to waive the one day posting requirement on **HB 1**. Agreed.

Motions, Petitions and Communications

Representative Stumbo moved that the rules be suspended to allow the Subcommittee on Education, Committee on Appropriations and Revenue, and the Committee on Judiciary to meet upon recess. Agreed.

Representative Stumbo announced that Committee Substitute No. 1 to **HB 1** would be delivered to the members as soon as it was printed. The floor would then be left open for the members to file amendments.

Representative Deskins inquired if amendments filed under this procedure would meet the time requirement specified in the House Rules for filing amendments prior to consideration.

The Speaker stated that Committee Substitute No 1 to **HB 1** would be available to the members before the meeting of the Committee on Appropriations and Revenue and that the floor would be left open in order that there be adequate time to file floor amendments.

Recess

Representative Stumbo moved that the House recess until 1:00 p.m. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Recess

Representative Stumbo moved that the House recess until 2:00 p.m. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Recess

Representative Stumbo moved that the House recess until 3:00 p.m. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order. Representative Stumbo asked for a committee report.

Report of Committees (Cont.)

The Committee on Appropriations and Revenue reported **HB 1**, with Committee Substitute No. 2 attached thereto, with the expression of opinion that the same should pass. Ordered referred to the Committee on Rules

The Committee Substitute No. 2 to **HB 1** is as follows:

AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related ***traumatic event or series of traumatic events, including cumulative trauma***[~~harmful change in the human organism~~], arising out of and in the course of employment ***which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, unless the natural aging process is substantially accelerated into impairment by reason of the work, and***[~~, including damage to or loss of a prosthetic appliance, but~~] does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used

generally, unless the context indicates otherwise, shall include an occupational disease ***and damage to a prosthetic appliance***, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this section shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure" as used in KRS 342.316 shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.

(5) "Death" means death resulting from an injury or occupational disease.

(6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.

(7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.

(8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

(9) "Commissioner" means the commissioner of the Department of Workers' Claims.

(10) "Board" means the Workers' Compensation Board.

(11) ***(a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;***

(b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and

(c) "Permanent total disability" means the condition of an employee, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:

1. Total and permanent loss of sight in both eyes;

2. Loss of both feet at or above the ankle;

3. Loss of both hands at or above the wrist;

4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;

5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;

6. Incurable insanity or imbecility; or

7. Total loss of hearing[~~"Disability" means a decrease of wage earning capacity due to injury or loss of ability to compete to obtain the kind of work the employee is customarily able to do, in the area where he lives, taking into consideration his age, occupation, education, effect upon employee's general health of continuing in the kind of work he is customarily able to do, and impairment or disfigurement~~].

(12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

(13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.

(14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.

(15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

(16) "Person" means any individual, partnership, firm, association, trust, joint venture, corporation, or legal representative thereof.

(17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from others than the employer as evidenced by the employee's federal and state tax returns.

(18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.

(19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.

(20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.

(21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the ***Kentucky*** Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.

(23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.

(b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

(24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. ***For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.***

(25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. ***For policies covering leased employees as defined in Section 36 of this Act, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in Section 36 of this Act for***

each leased employee for that portion of the payroll pertaining to the leased employee.

(b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).

(28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:

(a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

(b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.

(c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by ***1.25***~~[1.12]~~ and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under

KRS 342.122.

(d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.

(e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).

(f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

(g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection[~~, except that the value for each such employer's claims shall be the total of the indemnity benefits paid by the employer, adjusted to current benefit levels, plus the medical benefits paid~~].

(h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents ($0.30) per one hundred dollars ($100) of the employer's most recent annualized payroll for employees covered by this chapter.

(29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

(30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.

(32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.

(33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.

(34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.

(35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition.

(36) "Permanent disability rating" means the permanent impairment rating selected by an arbitrator or administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

Section 2. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided

emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. ***The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled.*** The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.

(3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

(a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;

(b) The employee shall be allowed choice of provider within the plan;

(c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

(d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and

(g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.

(h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.

(i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

(5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

(6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.

(7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge ***or arbitrator*** by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge ***or arbitrator*** may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, ***arbitrator,*** or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

Section 3. KRS 342.120 is amended to read as follows:

(1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) ***The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred after the effective date of this Act.***[~~A claimant may name the special fund as a party in the original application for benefits, or either party shall as soon as practicable, by motion, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if either or both of the following appears:~~

~~(a) The employee is disabled, whether from a compensable injury, occupational disease, pre-existing disease, or otherwise, and has received a subsequent compensable injury by accident, or has developed an occupational disease;~~

~~(b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.~~

~~(3) All motions to join the special fund shall include proper allegations demonstrating the basis for joinder and certification of the fact that a copy of the motion and the entire case file has been forwarded to the special fund at the cost of the movant.~~

~~(4) Failure to move for joinder of the special fund within the time limit prescribed by this section, without a showing of good cause, shall bar any recovery against the special fund.~~

~~(5) When the special fund has been made a party, the administrative law judge may direct the procedures provided in KRS 342.121.~~

~~(6) If it is found that the employee is a person mentioned in paragraphs (a) or (b) of subsection (2) of this section and a subsequent compensable injury or occupational disease has resulted in additional permanent disability so that the degree of disability caused by the combined disabilities is greater than that which would have resulted from the subsequent injury or occupational disease alone, and the employee is entitled to receive compensation on the basis of the combined disabilities, the employer shall be liable for the payment of all income benefits until the benefits paid have reached a percentage of the full income benefits awarded by the administrative law judge which is equal to the percentage of disability which would have resulted from the latter injury or occupational disease had there been no pre-existing disability or dormant, but aroused disease or condition.~~

~~(7) The remaining compensation for which such resulting condition would entitle the employee, including any compensation for disability resulting from a dormant disease or condition aroused into disabling reality by the injury or occupational disease, but excluding all compensation which the provisions of this chapter would have afforded on account of prior disabling disease or injury had it been compensated thereunder, shall be paid out of the special fund provided for in KRS 342.122. Such remaining compensation shall be paid directly to the employee under such regulations as the secretary of finance and administration may provide for such purpose.~~

~~(8) In making the computation for the apportionment of benefits under this section, the administrative law judge shall determine the amount of the employee's weekly income benefits and apportion the award commencing with the employer and special fund as follows:~~

~~(a) For benefits awarded under this chapter, the portions shall be based on the number of weeks stated therein;~~]

(3) [~~(b) In instances~~]Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, ***with the period of payment beginning on the date settlement was approved by an administrative law judge or arbitrator***[~~unless otherwise agreed by all parties~~]. ***This provision is remedial and shall apply to all pending and future claims.***

Section 4. KRS 342.122 is amended to read as follows:

[~~(1) (a) For the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Division of Special Fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and, financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth enacted by the General Assembly, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4) and there is hereby imposed on and after January 1, 1990, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional special fund assessment at the rate of forty-seven percent (47%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1990, an additional assessment at the rate of forty-seven percent (47%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(c) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on such premiums.~~

~~(2) Each November 15, the funding commission shall determine the amount of premiums reported and assessments imposed in subsection (1) of this section for the past period as appropriate. If the funding commission determines that the special fund assessment rate imposed to produce seventy million dollars ($70,000,000) or the additional special fund assessment rate imposed to produce forty million dollars ($40,000,000) are likely to produce more or less than seventy million dollars ($70,000,000) or forty million dollars ($40,000,000) during the next annual period, the commission shall, based upon such determination, calculate such adjustments to each rate as shall be necessary to provide seventy million dollars ($70,000,000) and forty million dollars ($40,000,000) respectively, during the next annual period beginning on January 1 of each year. On or before December 1 of each year, the commission shall notify each insurance company writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the adjusted rates which shall become effective on January 1, of each year, unless modified by the General Assembly.~~

~~(3) (a) Notwithstanding the assessment rates in subsection (1) of this section or the special fund assessment amounts specified in subsection (2) of this section, for calendar year 1995, the funding commission shall impose a special fund assessment rate necessary to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(b) For calendar year 1996 the funding commission shall impose a special fund assessment rate necessary to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(c) 1. The assessment rate calculated to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) under paragraph (a) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (a) of this subsection, which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premium, as defined in KRS 342.0011 of every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(d) 1. The assessment rate calculated to produce eighty-eight million, six thousand two hundred forty-one~~

~~dollars ($88,006,241) under paragraph (b) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (b) of this subsection which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premiums, as defined in KRS 342.0011 by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(e) On or before December 1 of 1994 and 1995, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the special fund assessment rates established in this subsection which shall become effective on January 1, 1995, and January 1, 1996, respectively, unless modified by the General Assembly. The payment schedules and other matters relating to the payment of the special fund assessments required pursuant to this section shall apply to the assessment rates and amounts required under this subsection.~~]

(1) ***(a)***[~~(f)~~] For calendar year 1997 and for each calendar year thereafter, ***for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk***[~~the assessment rates and amounts contained in the provisions of subsections (1) and (2) of this section shall apply~~].

(b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

(c) In addition to the assessment imposed in paragraphs (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars ($19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars ($19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars ($4,750,000).

(d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.

(2)[~~(4)~~] These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. ***Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service.*** Employers carrying their own risk and employers defined in KRS

342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(3)[~~(5)~~] The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

(4)[~~(6)~~] A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(5)[~~(7)~~] The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(6)[~~(8)~~] Each self-insured employer, group self-insurer or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(7)[~~(9)~~] The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(8)[~~(10)~~] The fund heretofore designated as the subsequent claim fund is abolished and there is substituted therefor the special fund as set out by this section and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

[~~(11) Notwithstanding any other provision of this section or this chapter, or the Kentucky Revised Statutes, generally, the assessment rates for the special fund, as determined by this section, which were in force and effect on January 1, 1990, shall continue in force and effect until December 1, 1991, and the total amount of funds collected pursuant to the assessment rates shall not be limited to the provisions of this section.~~]

(9)[~~(12)~~] Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 5. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386***, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities***;

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in ***this chapter***[~~KRS 342.122~~];

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in ***this chapter***[~~KRS 342.122~~]; and

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

(c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

(d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

(e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

(f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

(5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 6. KRS 342.125 is amended to read as follows:

(1) ***Upon motion by any party or upon an arbitrator's or administrative law judge's own motion, an arbitrator or administrative law judge may reopen and review any award or order on any of the following grounds:***

(a) Fraud;

(b) Newly discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

(2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(3) Except for reopening solely for determination of the compensability of medical expenses, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party.

(4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the arbitrator or administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this

chapter, or change or revoke a previous order. The arbitrator or administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the arbitrator or administrative law judge[~~In claims where an award or order is entered pursuant to KRS 342.730(1)(a) or (1)(b) and upon its own motion or upon the application of any party and a showing of change of occupational disability, mistake or fraud, or newly discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. In claims where an award or order is entered pursuant to KRS 342.730(1)(c) or (d) and upon its own motion or upon the application of any party and a showing of change of medical condition, mistake, or fraud, or newly discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or the administrative law judge may change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. Any final award increasing or diminishing benefits shall require a showing of a change in occupational disability. Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder. The employer shall not suspend the payment of benefits during the pendency of any reopening procedures~~].

(5)[~~(2)~~] (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis ***and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease***, the ***arbitrator or*** administrative law judge may review an award ***or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732***[~~of a retraining incentive benefit because of the diagnosis, and upon a finding of respiratory impairment due to that pneumoconiosis shall make an award for benefits as provided in KRS 342.732. Such a reopening may also occur upon a showing of progression of respiratory impairment in a claim for which benefits were previously awarded under the provisions of KRS 342.732~~]. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings. ***A party may file no more than one (1) motion to reopen within two (2) years of the original award or order granting or denying benefits, and no claim may be reopened more than four (4) years following the original award or order granting or denying benefits except for fraud, reducing a permanent total disability award when an employee returns to work, and for increasing weekly benefit payments pursuant to KRS 342.730(1)(c) 2.***

(b) Benefits awarded as a result of a review under this subsection shall be reduced[~~ by the amount of retraining incentive benefits previously awarded and, if applicable, also~~] by the amount of ***retraining incentive benefits or*** income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.

(6)[~~(3)~~] In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.

(7)[~~(4)~~] Where an agreement has become an award by approval of the ***arbitrator or*** administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the ***arbitrator or the*** administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

(8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to the effective date of this Act may be reopened within four (4) years of the award or order or within four (4) years of the effective date of this Act, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

Section 7. KRS 342.213 is amended to read as follows:

(1) The Governor shall make all appointments to the board, appoint the administrative law judges, ***arbitrators,*** and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him by the Workers' Compensation Nominating Commission.

(2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:

(a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.

(b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.

3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

(c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.

(d) The members shall annually select a chairman of the nominating commission.

(e) Notwithstanding the provisions of subsection (2) of this section at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this paragraph the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.

(3) The commissioner shall monitor the workload of the administrative law judges and arbitrators and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred twenty (120) days prior to the expiration of the terms of the administrative law judges and arbitrators, and when a vacancy occurs under other circumstances, the commissioner shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the commissioner.

(4) (a) The Workers' Compensation Nominating Commission shall consult with the commissioner, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of administrative law judges and arbitrators. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge or arbitrator, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the commissioner of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the commissioner's certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge or arbitrator shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge and as an arbitrator.

(b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.

[~~(3) The Governor shall appoint the administrative law judges in accordance with the provisions of KRS 342.230 from a list of names submitted by the Workers' Compensation Nominating Commission. The list shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.230. The administrative law judges shall be subject to Senate confirmation in accordance with KRS 11.160.~~]

(5)[~~(4)~~] The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.

(6)[~~(5)~~] (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than ***sixty (60)***[~~ninety (90)~~] days after a vacancy occurs.

(b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.

(7)[~~(6)~~] The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars ($100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

Section 8. KRS 342.215 is amended to read as follows:

(1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.

(2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.

(3) Each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who[~~ has resigned or~~] has been removed from his position prior to the expiration of his term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) Members of the Workers' Compensation Board***, arbitrators,*** and the administrative law judges shall be members of the Kentucky Employees Retirement System.

(6) The Workers' Compensation Board is abolished effective on July 1, 2000, and as of midnight, June 30, 2000, the terms of all Workers' Compensation Board members shall end. Thereafter, appeals from the final orders of administrative law judges shall be directed to the Court of Appeals under the same standards set forth in this chapter for appeals to the Workers' Compensation Board.

Section 9. KRS 342.228 is amended to read as follows:

(1) The Department of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department shall be administered by a commissioner appointed by the Governor. The Governor shall select the commissioner from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.

(2) The commissioner shall[~~ be an attorney and shall~~] have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

Section 10. KRS 342.230 is amended to read as follows:

(1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, ***arbitrators,*** administrative law judges, and board members, shall be members of the classified service.

(2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges ***and arbitrators*** on an ongoing basis; assign cases; and monitor the caseloads of the

administrative law judges***, arbitrators,*** and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board***,***[~~ and~~] the administrative law judges***, and arbitrators***; annually report the activities of the board***,***[~~ and~~] administrative law judges***, and arbitrators*** to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.

(3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than sixteen (16) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, ***and***[~~or~~] extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge.[~~ The Governor shall appoint the administrative law judges from a list of three (3) names for each administrative law judge position submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213 and for this purpose only, a member of the Workers' Compensation Board shall serve as an ex officio member of the nominating commission.~~] Each administrative law judge may be employed for additional terms[~~ of four (4) years~~] with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case. ***To carry out the intent of this chapter and to implement its provisions, the commissioner shall have the authority to assign the duties of an arbitrator to an administrative law judge who shall work in that capacity as deemed necessary by the commissioner.***

(4) To ensure that the administrative law judges ***and arbitrators*** perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.

(5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge ***or arbitrator***. A member of the board or an administrative law judge ***or an arbitrator*** may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge***, an arbitrator,*** or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.

(6) Any vacancy in the term of an administrative law judge ***or an arbitrator***, which occurs prior to the expiration of the term, shall be filled ***if necessary*** by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.

(7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end***, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end***. On January 1, 1998, the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

(b) Effective at 12 midnight, December 31, ***1999***[~~1995~~], the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, ***2000***[~~1996~~], the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

[~~(c) On January 1, 1996, and January 1, 1998, as provided in paragraphs (a) and (b) of this subsection, and every fourth year thereafter, administrative law judges shall be appointed by the Governor for four (4) year terms and confirmed by the Senate in accordance with KRS 11.160. Confirmation hearings for administrative law judges shall be completed by the end of the regular session every four (4) years thereafter beginning with the 1996 Regular Session. Vacancies shall be filled in accordance with subsection (6) of this section.~~]

(8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those ***of other***[~~set forth in this section for~~] administrative law judges[~~, and to be subject to removal for the same reasons~~]. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, ***and*** providing educational opportunities for the administrative law judges[~~, and supervising the work of the employees of the Department of Workers' Claims who provide staff support for the~~

~~administrative law judges~~]. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional ***three***[~~one~~] thousand dollars ***($3,000)***[~~($1,000)~~] per year. ***At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter.*** The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

(9) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years except as set forth in subsection (11) of this section, not more than eight (8) arbitrators, each of whom shall have extensive knowledge in workers' compensation law and shall be paid the same salary as a District Judge. Each arbitrator may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an arbitrator, shall provide the name of the individual he intends to appoint to the position to the chairman of the Senate Economic Development and Labor Committee. The arbitrators shall conduct benefit review conferences, shall supervise the presentation of evidence, and shall render final decisions, orders, and awards. Arbitrators may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented as will expedite the preparation of the case.

(10) One (1) of the arbitrators appointed pursuant to this section shall be appointed chief arbitrator and in addition to the duties otherwise assigned arbitrators shall assist the commissioner in the scheduling of the activities of the arbitrators and in the supervision and training of arbitrators. The chief arbitrator shall be paid the same rate as the arbitrators plus an additional two thousand ($2,000) dollars per year. At any time, the commissioner may replace the chief arbitrator with one (1) of the other arbitrators at which time the former chief arbitrator shall resume the duties assigned to the other arbitrators pursuant to this chapter.

(11) (a) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1997. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

(b) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1999. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

Section 11. KRS 342.265 is amended to read as follows:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement ***signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an arbitrator or administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the arbitrator or administrative law judge. Upon claims settled after the effective date of this Act, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the special fund mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.***

(2) Settlement agreements concluded after March 31, 1997, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than ten dollars ($10) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.

(3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after the effective date of this Act, until December 31, 1997, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 1998, the commissioner shall fix the discount rate to be utilized in the succeeding year based upon the interest rate paid upon ten (10) year United States Treasury Notes as of July 1 of the preceding year.

(4) If the parties have previously filed an agreement which has been approved by the administrative law judge or arbitrator, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income

benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay[~~shall be filed with the administrative law judge, and, if approved by him, shall be enforceable as provided in KRS 342.305. In all cases where all parties have not joined in the settlement agreement, the administrative law judge shall not approve the agreement unless the agreement certifies that the party not participating in the settlement has received a copy of the settlement agreement at least ten (10) days prior to submission of the agreement for approval. Nothing herein shall prevent the voluntary payment of compensation in the amounts and for the periods prescribed in this chapter without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with the administrative law judge and approved by the administrative law judge in accordance with this section. No limitations of time shall begin to run until the date upon which the agreement is filed with and approved by the administrative law judge~~].

Section 12. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application ***for resolution of claim***[~~to the commissioner for a hearing in regard to the matter at issue and for a ruling thereon~~]. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made.

(2) ***Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an arbitrator for benefit review. The arbitrator shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim***[~~Except with respect to uncontested claims for retraining incentive benefits by reason of occupational pneumoconiosis related to exposure to coal dust, or for disability or death by reason of occupational diseases, within thirty (30) days after the application has been received the commissioner shall set the date for a prehearing conference, to be held as soon as practicable in view of the matter involved, and shall notify the parties at issue of the time and place of the prehearing conference~~].

(3) ***(a) The arbitrator shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, or submit medical reports and other information, or refer the employee for medical evaluation.***

(b) If an arbitrator determines in his discretion that a pending claim presents factual issues best resolved through hearing before an administrative law judge, the arbitrator may enter an order transferring the claim to an administrative law judge for further proceedings[~~The prehearing conference shall be at or convenient to the place where the employee resides, provided that such prehearing conference shall be held within the boundaries of the Commonwealth. At the prehearing conference, an administrative law judge shall confer informally with the parties at issue and their counsel, if any, for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposal of the case. If agreement upon any matter is reached, the administrative law judge shall write a memorandum setting forth the matters agreed upon. The administrative law judge and all parties shall sign the memorandum, and the administrative law judge shall file it with the commissioner. Once filed, the memorandum shall become a part of the record~~].

(4) ***Except where compelling circumstances justify delay and except as provided in subsection (3)(b) of this section, the arbitrator shall render a written determination upon all matters at issue within ninety (90) days of the assignment of the claim. Through written order, the arbitrator may grant or deny any benefit afforded by this chapter, including interlocutory relief***[~~If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive~~].

(5) ***Unless timely appeal is filed as set forth in KRS 342.275, the written determination of the arbitrator shall be a final order enforceable under the provisions of KRS 342.305***[~~An application for adjustment of claim shall be held in abeyance by the administrative law judge during any period voluntary payments of compensation are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle him, unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay~~].

(6) Benefit review conferences shall be held at a place designated by the commissioner, provided that the proceedings shall be held within the boundaries of the Commonwealth.

(7) Within one hundred twenty (120) days of the effective date of this Act, the commissioner shall promulgate administrative regulations establishing procedures for the resolution of claims, which shall include benefit review. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an

emergency basis and be applied to all pending claims.

Section 13. KRS 342.275 is amended to read as follows:

(1) Within thirty (30) days after the filing of the benefit review determination with the commissioner, any party may appeal that determination by filing a request for hearing before an administrative law judge. Proceedings before the administrative law judge shall be de novo but subject to penalties for unreasonable proceedings under KRS 342.310.

(2) The commissioner shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a hearing. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(3) ~~[In any claim in which settlement is not reached at the prehearing conference, the administrative law judge shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, except that the conference shall be held within the boundaries of the Commonwealth.]~~The administrative law judge may grant continuances according to criteria established in administrative regulations promulgated by the commissioner.~~[The commissioner shall notify the parties at issue of the time and place of the hearing.]~~ The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless ***extension is*** mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 14. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the ***arbitrator or*** administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.~~[The failure to file a petition for reconsideration shall not preclude an appeal on any issue.]~~

Section 15. KRS 342.315 is amended to read as follows:

(1) ***The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.***

(2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

(3) The commissioner, an arbitrator, or an administrative law judge may, upon the application of ***any***~~[either]~~ party or upon his own motion, ***direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator***~~[appoint not more than three (3) disinterested and duly qualified physicians or surgeons]~~ to make any necessary medical examination of the employee~~[and to testify in respect thereto]~~. Such ***medical evaluator***~~[physicians or surgeons]~~ shall file with the ***commissioner***~~[administrative law judge]~~ within fifteen (15) days after such examination a written report. The ***medical evaluator***~~[physicians or surgeons]~~ appointed may charge a reasonable fee not exceeding fees ***established by the commissioner***~~[permitted by administrative regulation]~~ for ***those services***~~[testimony and reports in workers' compensation claims and by the workers' compensation medical fee schedule for physicians, to be paid out of the special fund]~~.

(4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.

(5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.

(6) Not less often than annually the designee of the secretary of the Cabinet for Health Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized

techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter[~~(2) The party filing the motion for an examination shall pay the necessary and reasonable traveling expenses incurred by the employee in submitting to such examination. If the examination is ordered on the administrative law judge's own motion, then such traveling expenses shall be paid out of the special fund~~].

Section 16. KRS 342.316 is amended to read as follows:

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator[~~. Said employer shall have the right to contribution from each previous employer, as determined in an independent civil action, wherein the employee was similarly exposed to the hazard of said occupational disease, in a sum equal to the ratio that each exposure employment time bears to the total exposure employment time, except as otherwise provided in paragraph (a) of subsection (10) of this section~~]; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later[~~, except that the time of the beginning of retraining incentive benefits awarded under KRS 342.732 shall be the date the award for those benefits by the administrative law judge becomes final~~].

(2)[~~ (a)~~] The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur***.***[~~;~~]

(3) [~~(b) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to~~] filing ***occupational disease***[~~of~~] claims shall be as follows:

(a)[~~1. a.~~] The application ***for resolution of claim*** shall set forth the complete work history of the ***employee***[~~applicant~~] with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least ***one (1)***[~~two (2)~~] written medical ***report***[~~reports~~] supporting his claim. ***This***[~~These~~] medical ***report***[~~reports~~] shall be made on the basis of[~~ comprehensive~~] clinical ***or X-ray examination***[~~ examinations~~] performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The ***report***[~~reports~~] shall be made by ***a*** duly-licensed ***physician***[~~physicians~~]. The commissioner shall promulgate administrative regulations which prescribe the format of the medical ***report***[~~reports~~] required by this section and the manner in which the ***report***[~~reports~~] shall be completed.

1.[~~b.~~] For coal-related occupational pneumoconiosis claims, each clinical examination shall include ***a*** chest X-ray ***examination as well as***[~~examinations and~~] spirometric tests ***when pulmonary dysfunction is alleged***.

2.[~~c.~~] For other compensable occupational pneumoconiosis claims, each clinical examination shall include ***a chest*** X-ray ***examination***[~~examinations~~] and appropriate pulmonary function tests.

(b)[~~2.~~] To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust, shall comply with accepted medical standards as follows:

1.[~~a.~~] Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

2.[~~b.~~] Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of [~~subsection (2)(b) of~~]this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. [~~(c) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to the~~] determination of ***occupational disease*** claims shall be as follows:

a.[~~1.~~] Immediately upon receipt of ***an application for resolution***[~~said application for adjustment~~] of claim, the commissioner shall notify the ***responsible***[~~affected~~] employer,[~~ the special fund,~~] and ***all***[~~any~~] other interested ***parties***[~~party of such claim~~] and shall furnish them with a full and complete copy of the ***application.***[~~claim;~~]

b. The commissioner shall assign the claim to an arbitrator and shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years following any prior referral for examination for the same disease.

c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.

d. The arbitrator shall conduct such proceedings as are necessary to resolve the claim, and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.

e. Unless a voluntary settlement is reached by the parties, the arbitrator shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.

5. The procedure for appeal from a determination of an arbitrator shall be as set forth in KRS 342.275.

[~~2. Upon receipt of notice of the claim, the employer, the special fund, and any other interested party shall have the right to have the claimant examined by competent medical experts, at their expense, including a reasonable sum for travel. Within thirty (30) days of any such examination, the claimant or his representative shall be furnished a copy of said medical report by the party requesting such report. Also, the employer, the special fund, or any other party to the claim shall have the right to have the claimant evaluated by vocational experts or institutions, at the employer's expense, including a reasonable sum for travel. Within thirty (30) days of any vocational examination, the claimant or his representative, shall be furnished a copy of that vocational report by the party requesting that report; and~~

~~3. Within sixty (60) days of the receipt of the claim, the employer, the special fund, and any other interested party shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, then an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall set a date for a prehearing conference and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the commissioner shall be followed. Upon request of an interested party and a showing of good cause, the administrative law judge may extend, one (1) time, the time period for filing a notice of resistance as prescribed in this subparagraph, but the extension shall not exceed thirty (30) days.~~

~~(d) For claims filed under subsection (1)(a) of KRS 342.732, the procedure shall be as follows:~~

~~1. For retraining incentive benefits under KRS 342.732, the claimant shall file two (2) X-rays and the~~

~~reports thereof which shall conform to the standard for X-rays contained in this subsection.~~

~~2. The commissioner shall notify the affected employer of the claim and shall furnish him with a full and complete copy of the claim.~~

~~3. Within sixty (60) days of the receipt of the claim, the employer shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall notify the affected employee thereof. In litigated claims, the regular procedures prescribed by the commissioner shall be followed.~~]

(4)[~~(3)~~] (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or, if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income[~~ or retraining incentive~~] benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(5)[~~(4)~~] The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:

(a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and

(c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section***, except as provided in KRS 342.750(6)***.

(6)[~~(5)~~] If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

(7)[~~(6)~~] No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(8)[~~(7)~~] No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.

(9)[~~(8)~~] Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard[~~ by the administrative law judge~~] when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

(10)[~~(9)~~] When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.

(11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in Section 34 of this Act and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.

(b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.

(12) A concluded claim for benefits by reason of contraction of coal workers pneumoconiosis shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

[~~(10) (a) Except as provided in paragraph (c) of this subsection, the employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employee was last exposed to the hazard of that occupational disease. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the special fund for all claims filed prior to January 1, 1973; and seventy-five percent (75%) shall be paid by the special fund and twenty-five percent (25%) by the employer for all claims filed thereafter. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the special fund, and the employer shall be liable for sixty percent (60%) of the compensation due and the special fund shall be liable for forty percent (40%) of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the special fund under this section, all of the compensation awarded shall be paid pursuant to KRS 342.120 and under such regulations as the commissioner may provide for such purpose; and~~

~~(b) In all claims for compensation partially payable by the special fund, the Director of the Division of the Special Fund shall be designated as codefendant.~~

~~(c) The employer in whose employment the employee was last exposed to the hazard of the disease shall alone be liable for payment of retraining incentive benefits awarded under KRS 342.732.~~]

Section 17. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge ***or arbitrator*** pursuant to the statutes and administrative regulations.

(2) Attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) One thousand dollars ($1,000) for services performed up to and including the date of a written determination by the arbitrator. This fee shall be paid by the employee from the proceeds of the award or settlement.

(b) Upon an appeal by an employee from a written determination of an arbitrator or an award or order of an administrative law judge, a fee to be fixed by the administrative law judge upon consideration of the extent, quality and complexity of services not to exceed twenty percent (20%) of the first twenty-five thousand dollars ($25,000) of any increased income benefits awarded, ten percent (10%) of the next fifteen thousand dollars ($15,000) of increased income benefits, and five percent (5%) of the remainder of the additional income benefits awarded and not to exceed in all ten thousand dollars ($10,000). This fee shall be paid by the employee from the proceeds of the award or settlement and shall be in addition to the fee, if any, awarded under subsection (2)(a) of this section.

(c) Upon an appeal by an employer or carrier from a written determination of an arbitrator or an award or order of an administrative law judge, if the employer or carrier does not prevail upon appeal, the administrative law judge shall fix an attorney's fee to be paid by the employer or carrier for the employee's attorney upon consideration of the extent, quality, and complexity of the services rendered not to exceed five thousand dollars ($5,000) per level of appeal. This attorney's fee shall be in addition to any fee awarded under subsections (2)(a) and (b) of this section.

(d) Attorney-client employment contracts entered into and signed prior to the effective date of this Act for injuries or date of last exposure occurring prior to the effective date of this Act shall not be subject to the conditions of subsections (a), (b), and (c) of this section, and the law existing at the date of the injury or last exposure to the hazards of an occupational disease shall apply.

(3) In approving an allowance of attorney's fees, the administrative law judge or arbitrator shall consider the extent, complexity, and quality of services rendered, and[~~In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable~~] in the case of death,[~~ and then by the use of~~] the Remarriage Tables of the Dutch Royal Insurance Institute. ***An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court***[~~However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000)~~].[~~ The administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~]. The date of injury or last exposure shall control the applicable maximum attorney's fee[~~, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~].

(4)[~~(2)~~] No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ***arbitrator or*** administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the ***written determination of an arbitrator or*** last appealable order of ***an***[~~the~~] administrative law judge. ***Except when the attorney's fee is to be paid by the employer or carrier,*** the attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The ***arbitrator or*** administrative law judge, upon request of the ***employee***[~~claimant~~], may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(5)[~~(3)~~] ***At the commencement of the attorney-client relationship,*** the attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(6)[~~(4)~~] The General Assembly declares that by the enactment of KRS 342.316***(3)***[~~(2)(b)~~], it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ***and arbitrator*** shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(7)[~~(5) The administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated below are followed:~~

~~(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).~~

~~(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.~~

~~(6) (a)~~] In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ***arbitrator or*** administrative law judge ***subject to the limits set forth in subsection (2) of this section***. In awarding the attorney's fee, the ***arbitrator or*** administrative law judge shall consider the factors set forth in subsection ***(3)***[~~(1)~~] of this section. ***If no additional amount is recovered upon reopening, no attorney's fee shall be awarded***[

~~(b) Thereafter, the administrative law judge shall fix the attorney's fee~~]. No[~~ attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any~~] attorney's fee ***shall*** be allowed or approved exceeding the amounts provided in subsection ***(2)(b)***[~~(1)~~] of this section applicable to any additional amount recovered.[~~ If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee.~~]

(8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge or arbitrator in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the same limitations as to maximum fees at each level except that fees for representation before administrative law judges shall not exceed ten thousand dollars ($10,000) and fees for representing employers shall not be dependent upon the result achieved. Fees for legal services in presenting a claim for re-imbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars ($1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

(9) The provisions of this section shall apply to all claims resolved pursuant to emergency administrative regulations promulgated by the commissioner pursuant to this chapter.

Section 18. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 19. KRS 342.335 is amended to read as follows:

(1) No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to ***delay or*** omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, ***which may affect the amount of money received or not paid,*** including***:***

(a) Misrepresentations of prior loss experience, hazards, classifications, payrolls, or other acts that are designed to cause a reduction in an employer's insurance premium;

(b) Prepare, make or present a false statement, oral or written, for the purpose of obtaining benefits or compensation;

(c) Prepare, make, or present false or counterfeit insurance policies, certificates of insurance, insurance binders, or other documents including those relating to self-insurance, purporting to evidence with this chapter as to security; and

(d) Prepare, make or present false billing for services rendered or products delivered;

[~~ misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, ~~]shall be subject to the civil or criminal penalties, or both, imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

(3) All workers' compensation fraud investigations, except for claimant fraud investigations conducted by the Division of Special Fund, shall be conducted by the Department of ***Workers' Claims and appropriate staff shall be added to aggressively perform that function. Any report of alleged violations of subsections (1) and (2) of this section received by the Department of Insurance shall be forwarded to the Department of Workers' Claims for appropriate action. Investigators within the department shall be vested with the following power and authority:***

(a) General police powers including the privileges and immunities of sheriffs, and their jurisdiction shall be

coextensive with the state;

(b) Administer oaths and affirmations;

(c) Collect evidence; and

(d) Make arrests for criminal violations of this chapter established as result of its investigations.

(4) The commissioner shall have the power to issue subpoenas to order the attendance of witnesses or proffering of information and documentation relating to any alleged violation of sections (1) or (2) of this section.

(5) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies to any transaction arising from activities relating to this chapter.

~~[Insurance or the Attorney General.]~~

SECTION 20. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that the establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation, to make provisions for the general welfare of workers and their dependents, to relieve the consequences of any industrial injury or death, and to secure the payment of workers' compensation benefits provided by this chapter.

(2) The General Assembly further finds and declares that provision must be made for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet obligations because of insolvency. It is for that purpose that the General Assembly establishes mechanisms requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty associations, one (1) of whose members shall be composed of individually self-insured employers excluding individually self-insured coal employers and public sector employers; one (1) shall be composed of group self-insurers created pursuant to KRS 342.350(4); and one (1) shall be composed of individually self-insured coal operators.

SECTION 21. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

As used in Section 20 to 26 of this Act, unless the context requires otherwise:

(1) "Insolvent self-insurer" means either an individual self-insured employer or a group self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the commissioner, or who has failed to provide compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner.

(2) "Member" means a self-insured employer or self-insurance group that participates in a guaranty fund created pursuant to Sections 20 to 26 of this Act.

(3) "Guaranty fund" means one of the three (3) guaranty funds established pursuant to Sections 20 to 26 of this Act.

(4) "Directors" means the board of directors of a guaranty fund.

(5) "Certificate of default" means a notice issued by the commissioner based upon a finding that a self-insured employer or self-insurance group has failed to pay compensation required by this chapter.

SECTION 22. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, public sector self-insured employers or self-insurance groups are specifically exempted from the provisions of Sections 20 to 26 of this Act.

SECTION 23. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each noncoal, individually self-insured employer who has qualified and been certified by the commissioner as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The commissioner shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.

(2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insurance groups or associations established under KRS 342.350(4), to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each self-insurance group or association that is authorized to self-insure and certified by the commissioner to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-

insure. The commissioner shall revoke any authorization and certificate to self-insure of any self-insurance group or association for failure to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection .

(3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insurance group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance or reinsurance, required by this chapter. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a "plan of operation" pursuant to administrative regulations promulgated by the commissioner.

(5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

(6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insurance group or association. In addition, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.

(7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance, and borrow funds as it deems necessary for the protection of the members and their employees.

(8) Security called by the commissioner and dispersed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly, or any other state agency.

(9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.

(10) No liability shall lie, whether at law or in equity, against any director, agent or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

SECTION 24. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.

(2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the department of workers' claims or a court of competent jurisdiction. Upon assumption of the obligations of a member

by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.

(3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

(4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars ($1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

(5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars ($500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars ($500,000) or such other amount not to exceed, in any event, one million dollars ($1,000,000) based upon a maximum annual assessment for each guaranty fund.

(6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members, unless the guaranty fund has the assets prescribed in subsection (5) of this section and the distributions are approved by the commissioner.

(7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.

(8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

SECTION 25. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Each guaranty fund, by making payment of compensation under this chapter, has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.

(2) Notwithstanding subsection (1) of this section, each guaranty fund shall not be liable for the payment of any penalties or interest assessed for any act or omission on the part of any person, including but not limited to the penalties provided in this chapter.

(3) Each guaranty fund shall be a party in interest in all proceedings involving compensation claims against an insolvent member whose compensation obligations have been paid or assumed by the guaranty fund. The guaranty fund shall have the same rights and defenses as the insolvent individual self-insurer.

(4) Each guaranty fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by each guaranty fund, including reasonable administrative and legal costs.

(5) Each guaranty fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the guaranty fund, including but not limited to any excess insurance carrier of the insolvent member.

SECTION 26. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner and to each member.

(2) Each guaranty fund shall be established on March 1, 1997.

(3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

Section 27. KRS 342.610 is amended to read as follows:

(1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.

(2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another (a) to have work performed consisting of the removal, excavation or drilling of soil, rock or mineral, or the cutting or removal of timber from land, or (b) to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of such person, shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

(3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by[~~ his~~] intoxication***, the influence of an illegal drug or drugs,*** or by his willful intention to injure or kill himself or another.

(4) If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.

(5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage from the builder before a permit is issued. A person who is exempt under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter, shall so certify to the local building official, in writing and on a form prescribed by the commissioner, in lieu of providing proof of workers' compensation coverage.

Section 28. KRS 342.640 is amended to read as follows:

(1) The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(a)[~~(1)~~] Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(b)[~~(2)~~] Every executive officer of a corporation;

(c)[~~(3)~~]Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire or police department shall be deemed for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled volunteer member or trainee of the civil defense corps of this state, as established under KRS Chapter 39, shall be deemed for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed for the purposes of this chapter to be in the employment of this state;

(d)[~~(4)~~] Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(e)[~~(5)~~]Subject to the provisions in ***paragraph (d)***[~~subsection (4)~~] of this ***subsection***[~~section~~], every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

(2) Every employer subject to this chapter shall, at each job site in a location accessible to all employees, conspicuously post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner. The format and contents of the notice shall be established by the commissioner through administrative regulation and copies shall be provided to the employer by its insurance carrier.

Section 29. KRS 342.715 is amended to read as follows:

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the ***arbitrator or*** administrative law judge, the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the ***permanent***[~~percentage of~~] disability ***rating*** as determined in this chapter.

Section 30. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For ***temporary or permanent*** total disability[~~ due to a work-related injury or occupational disease~~], sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related ***impairment and conditions compensable under KRS 342.732 and hearing loss covered in Section 38 of this Act***[~~disability~~] shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

(b) For permanent[~~,~~] partial disability,[~~ where an employee returns to work at a wage equal to or greater than the employee's preinjury wage,~~] sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by ***the permanent***[~~his percentage of~~] impairment ***rating*** caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***times the factor set forth in the table that follows:***[~~ unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section.~~]

AMA Impairment	***Factor***
0 to 5%	***0.75***
6 to 10%	***1.00***
11 to 15%	***1.25***
16 to 20%	***1.50***
21 to 25%	***1.75***
26 to 30%	***2.00***
31 to 35%	***2.25***
36 and above	***2.50***

[~~The period of ~~]Disability under this paragraph for nonwork-related disabilities ***and conditions previously compensated under this chapter*** shall not extend the maximum period ***or the amount*** of ***partial*** disability ***benefits***[~~ under this paragraph~~]. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) ***1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the payment for permanent partial disability shall be one and one-half (1.5) times the amount otherwise determined under subsection (1)(b) of this section, but this provision shall not be construed so as to extend the duration of payment.***

2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability otherwise payable under subsection (1)(b) of this section shall be reduced by one-half (1/2) for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be restored to the rate prescribed in subsection (1)(b) of this section.

3. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subsection (1)(c)2. of this section.[~~ For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.~~] .

(d) For permanent[~~,~~] partial disability, if an employee sustains[~~ impairment or~~] disability[~~ in excess~~] of fifty percent (50%) ***or less*** as a result of a work-related injury[~~ or occupational disease and prior work-related active disability~~] the compensable permanent partial disability period shall[~~ then~~] be ***four hundred twenty-five (425) weeks, and if the disability is greater than fifty percent (50%), the compensable permanent partial disability period shall be*** five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. ***Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to subsection (1)(c)1. of this section which shall not exceed one hundred percent (100%) of the state average weekly wage nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in subsection (1)(b) of this section would yield a greater percentage of disability.***

(e) For permanent disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in Section 38 of this Act shall not be considered in determining the extent of disability or duration of payments under this section[~~Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection~~].

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) ***All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old age Social Security retirement benefits***~~[If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday]~~.

(5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.

(6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan, which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.

(7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

Section 31. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

(1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.

(d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, 25 percent.

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.

(6) ***In addition to other benefits as provided by this chapter,*** if death occurs ***within four (4) years of the date of injury*** as a direct result of a work related injury,[~~ and the deceased has no statutory dependents, as determined by this section,~~] a lump-sum payment of ***twenty-five thousand dollars ($25,000)***[~~$10,000~~] shall be ***made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be*** paid[~~ to his estate, in addition to the amount provided for in KRS 342.720; provided, however, that the lump-sum payment shall be reduced by any income benefits previously paid on account of that injury~~].

(7) All benefits awarded pursuant to this section***, other than those provided in subsection (6) of this section,*** shall be subject to the limitations contained in KRS 342.730(4).

Section 32. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.

(2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the ***arbitrator,*** administrative law judge***,*** or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of ***all*** the amounts authorized to be paid therefrom under the authority of this subsection ***including reimbursement of the special fund of all liability apportioned to it*** and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. ***This provision shall apply to all pending claims upon which a final order has not been entered.***

(5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.

(6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

Section 33. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If ***an employee has a radiographic classification of category 1/1 or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by report of X-ray which conforms to the standards for X-rays contained in subsection (2) of KRS 342.316, and respiratory impairment resulting from exposure to coal mine dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined by KRS 342.740 but not more than seventy-five percent (75%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks. These benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking twenty-four (24) or more instruction hours per week in a bona fide training or education program approved***[~~the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X-rays and reports of the X-rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only retraining incentive benefit which shall be an amount equal to sixty six and two thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not to exceed two hundred and eight (208) weeks. These benefits may be paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be collected semimonthly as provided in KRS 342.040. While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved~~] under administrative regulations to be promulgated by the commissioner***. The employer shall also pay***,[~~ benefits awarded under this paragraph shall be paid~~] directly to the institution conducting the training or education program***, instruction, tuition, and material costs not to exceed five thousand dollars ($5,000)***[~~on a semimonthly basis~~]. The benefit shall not be paid for a period in which the employee ceases to participate in the program. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)***. The period of one hundred four (104) weeks during which this benefit is payable shall begin no later than the one hundred eightieth day after the order awarding the benefit becomes final. If an employee completes an approved program of training in less than one hundred four (104) weeks and that employee has accepted a bona fide offer of employment at a location more than fifty (50) miles from the employee's usual residence in the field for which the employee has been trained, the employee shall be paid in a lump sum for relocation the lesser of the sum of three thousand dollars ($3,000) or the amount remaining in unpaid weekly training benefits as provided by this section***[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category[~~ 1/0,~~] 1/1[~~,~~] or 1/2, based on the latest ILO International Classification of Radiographics[~~,~~] and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of ***less than*** fifty-five percent (55%)[~~ or more but less than eighty percent (80%)~~] of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association***, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***[~~,~~] there shall be an irrebuttable presumption that the employee has an occupational disability rating of ***fifty***[~~seventy five~~] percent ***(50%)***[~~(75%)~~] resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of ***fifty percent (50%)***[~~seventy five (75%)~~] but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred[~~ and~~] twenty-five (425) weeks, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(c) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category ***2/1, 2/2, or 2/3 coal workers' pneumoconiosis***[~~1/0, 1/1, or 1/2~~], based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association ***or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***, there shall be an irrebuttable presumption that the employee is ***seventy-five percent (75%)***[~~totally~~] disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage ***multiplied by the disability rating of seventy-five percent (75%)*** but not ***to exceed***[~~more than~~] ***seventy-five***[~~ one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. ***The award shall be payable for a period not to exceed five hundred twenty (520) weeks.*** Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d) If ***it is determined***[~~the administrative law judge finds~~] that an employee has ***radiographic classification of 3/2 or 3/3*** occupational pneumoconiosis ***based on the latest ILO International Classification of Radiographs, and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the latest edition of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association,***[~~with a radiographic classification of category 2/1, 2/2, 2/3, 3/2, 3/3,~~] or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge ***or arbitrator*** that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge ***or arbitrator*** shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial

blood gas study.

(4) In no event shall income benefits awarded under~~[paragraphs (a) or (b) of subsection (1) of]~~ this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

SECTION 34. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Division of the Kentucky Coal Workers' Pneumoconiosis Fund in the Department of Workplace Standards which shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration and legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.

(3) The Kentucky coal workers' pneumoconiosis fund shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after the effective date of this Act. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the Kentucky coal workers' pneumoconiosis fund is established under subsection (4) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.

(4) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.

(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents ($0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.

(c) As of September 1, 1997, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than December 1 of the year preceding the rate change.

(5) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.

(6) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the

Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

(7) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(8) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732 and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).

SECTION 35. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner or his designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds or self-insured groups and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(j).

(2) All individual self-insured employers and self-insurance groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year. For self-insurance groups, the financial statement shall include an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods used. Such documentation shall include but not be limited to the following:

(a) Case reserves on known cases by accident period, both for losses and allocated loss adjustment expenses;

(b) Estimates of claims that have been incurred but not reported by accident period for both losses and allocated loss adjustment expenses;

(c) The method of discounting and the discount rate selected for case reserves and incurred but not reported losses; and

(d) Estimates of ultimate losses and allocated loss adjustment expenses for the prospective accident period and unallocated loss adjustment reserves.

(3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioners' designees, and expert assistance as necessarily incurred in the examination.

(4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

(5) Not less often than biennially the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of self-insureds so that payment of liabilities to workers under this chapter is assured.

SECTION 36. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Employer leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement.

(b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement.

(c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.

(d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers.

(e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time.

(f) "Temporary help service" means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's work force in special work situations, including employee absences, temporary skill shortages, and seasonal workloads.

(2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.

(3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

(4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. A lessee shall be deemed the employer unless the leased employee is a temporary worker. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.

(5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

SECTION 37. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information pursuant to KRS 342.335 or requested by the commissioner or his authorized representative. No civil cause of action of any nature shall arise against the person:

(a) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from law enforcement officials, their agents, or employees;

(b) For any information relating to suspected violations of KRS 342.335(1) and (2) furnished to or received from other persons; or

(c) For any information furnished in reports to the commissioner.

(2) The commissioner or any employee or agent of the Department of Workers' Claims shall not be subject to civil liability for libel, slander, or any other relevant tort relating to the execution of their duties pursuant to KRS 342.335 and KRS 342.990. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the Department of Workers' Claims or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) KRS 342.335 and KRS 342.990 shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

(4) The papers, documents, reports, or evidence relative to the information or reports received under KRS 342.335 shall not be subject to public inspection for so long as the commissioner deems reasonably necessary for the completion of any investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to any investigation shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of violations of KRS 342.335.

SECTION 38. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment the extent of binaural hearing impairment shall be determined under the latest available edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730 except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than eight percent (8%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.

(3) The commissioner shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.

(4) When audiograms and other testing reveal a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace there shall be a

rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

Section 39. KRS 342.803 is amended to read as follows:

(1) The ***Kentucky*** Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of[~~ Subtitle 24 and other provisions of~~] KRS Chapter 304 applicable to domestic mutual insurance companies unless otherwise provided or exempted in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

(2) Except for initial funding for start-up, the authority shall be entirely self-supporting.

(3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4) [~~On or before September 1, 1995, ~~]The authority shall[~~ begin to~~] provide coverage and issue policies[~~, as provided in subsection (1) of this section,~~] as an insurer in the voluntary market and as ***an insurer of last resort***[~~a residual market mechanism~~].

Section 40. KRS 342.805 is amended to read as follows:

As used in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~], unless the context otherwise requires:

(1) "Authority" means the ***Kentucky*** Employers' Mutual Insurance Authority.

(2) "Board" means the board of directors of the authority.

(3) ***"Insurer of last resort" means an entity that provides workers' compensation coverage to any and all employers who comply with the provisions of KRS 342.801 to 342.843 for their business in and incidental to the Commonwealth.***

(4) "Manager" means the manager of the authority.

(5)[~~(4)~~] "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage under this authority.

Section 41. KRS 342.811 is amended to read as follows:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to[~~ Subtitle 24 of~~] KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

(1) Sue or be sued;

(2) Hire a manager to administer the authority;

(3) Adopt a corporate seal;

(4) Develop bylaws for the operation of the authority;

(5) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;

(6) Examine and adopt an annual operating budget for the authority;

(7) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;

(8) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;

(9) Develop broad policy for the long-term operation of the authority consistent with its mission and fiduciary responsibility;

(10) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A;

(11) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness***;***[~~.~~]

(12) ***Pursuant to***[~~Subject to Subtitle 13 of ~~] KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;

(13) Pursuant to KRS 342.823, assess policyholders[~~ to cover its liabilities as provided in KRS 304.24-230~~]; and

(14) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

Section 42. KRS 342.817 is amended to read as follows:

(1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for

different classes of risks ***for the authority***.

(2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the ***market of last resort***[~~residual market~~] and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.

(3) Multitiered premium or rating plans may be developed to provide ***workers' compensation*** coverage to insureds ***in the Commonwealth***[~~in the residual market mechanism established by the authority, and who would not otherwise meet the underwriting standards required by the authority~~].

(4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a ***market of last resort***[~~residual market mechanism~~].

(5) The rates ***established***[~~developed~~] by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.

(6) ***Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the insurance commissioner in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.***

(7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for ***eighty-four (84)***[~~thirty-six (36)~~] months.

Section 43. KRS 342.823 is amended to read as follows:

(1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities ***except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners***[~~by the amount of future anticipated investment income~~].

(2) The board shall submit an annual independently-audited ***financial statement***[~~report~~] in accordance with procedures governing annual ***statements***[~~reports~~] adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year. The ***statement***[~~report~~] shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the co-chairs of the Legislative Research Commission. It shall indicate the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

(a) A summary of the prior quarterly reports required in KRS 342.821;

(b) An actuarial projection of solvency status for at least ten (10) years in the future; and

(c) Any recommendations pertaining to the same.

(3) If ***at any time*** the assets of the authority[~~ at any time~~] are less than its liabilities, the board ***may***[~~shall~~] levy an assessment on its policyholders***. The board may***[~~ and~~] enforce payment of the assessment in the manner provided in Subtitle 24 of KRS Chapter 304.

Section 44. KRS 342.841 is amended to read as follows:

The ***board***[~~authority~~] shall comply with KRS Chapter 61 in regard to open meetings and the conduct of ordinary business, except that proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth may be closed to the public. ***The authority shall act as any other domestic mutual insurance company with regard to all of its records. Any request for records shall be in writing. Any records requested shall be in pursuit of the investigation and the confidentiality of the information in the records shall be maintained.***

SECTION 45. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of any other law notwithstanding, the Governor shall include in the budget recommendation for the executive branch and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly for the biennium period beginning July 1, 1998, and for each biennium thereafter, recommendations for appropriations as provided in subsection (1)(c) of Section 4 of this Act to be made by the General Assembly to the benefit reserve fund within the Workers' Compensation Funding Commission established by KRS Chapter 342.

(2) The amount to be recommended for appropriation to the benefit reserve fund within the Workers' Compensation Funding Commission shall be nineteen million dollars ($19,000,000) of the coal severance tax, levied under KRS 143.020, estimate for each fiscal year of the biennium.

Section 46. 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section I. Labor, at pages 1901 and 1902, is amended to read as follows:

I. LABOR

59. LABOR CABINET

a. General Administration and Support

		1996-97	1997-98
General Fund		485,900	503,800
Restricted Funds		***3,612,900***	***3,691,700***
~~[Restricted Funds~~		~~3,556,700~~	~~3,607,000]~~
Total		***4,098,800***	***4,195,500***
~~[Total~~	~~4,042,600~~	~~4,110,800]~~	

b. Workplace Standards

		1996-97	1997-98
General Fund		1,660,700	1,730,600
Restricted Funds		***182,090,200***	***203,824,400***
~~[Restricted Funds~~		~~177,871,200~~	~~195,454,900]~~
Federal Funds		2,419,700	2,303,100
Total		***186,170,600***	***207,858,100***
~~[Total~~	~~181,951,600~~	~~199,488,600]~~	

c. Workers Claims

	1996-97	1997-98
Restricted Funds	***12,180,000***	***15,273,700***
~~[Restricted Funds~~	~~10,159,800~~	~~10,614,200]~~

d. Kentucky Occupational Safety and Health Review Commission

	1996-97	1997-98
Restricted Funds	272,700	293,600
Federal Funds	169,700	161,200
Total	442,400	454,800

TOTAL - LABOR CABINET

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***198,155,800***	***223,083,400***
~~[Restricted Funds~~	~~191,860,400~~	~~209,969,700]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***202,891,800***	***227,782,100***
~~[TOTAL~~	~~196,596,400~~	~~214,668,400]~~

60. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	1996-97	1997-98
Restricted Funds	***202,665,200***	***227,588,900***
~~[Restricted Funds~~	~~196,369,800~~	~~214,475,200]~~

TOTAL - LABOR

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***400,821,000***	***450,672,300***
~~[Restricted Funds~~	~~388,230,200~~	~~424,444,900]~~

Federal Funds	2,589,400	2,464,300
TOTAL	***405,557,000***	***455,371,000***
~~[TOTAL~~	~~392,966,200~~	~~429,143,600]~~

The credit provided for in subsection (1)(c) of Section 4 of this Act shall be made prior to the transfer to the Local Government Economic Assistance Fund required by 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operations, Item 12. Special Funds at pages 1876 and 1877, and notwithstanding KRS 42.4582. The appropriations to the Local Government Economic Assistance Fund and the Local Government Economic Development Fund contained in 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operation, Item 12. Special Funds, shall be adjusted accordingly. This Section of this Act prevails over any conflicting provision of 1996 Kentucky Acts Chapter 382, the 1996-98 State/Executive Branch Budget Memorandum.

Section 47. KRS 342.990 is amended to read as follows:

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(c) Any person who violates KRS 342.020(9), 342.035(2), KRS 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS

342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation.

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District and Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred[~~ and~~] eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Except as provided in paragraph (d) of this subsection, a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a misdemeanor where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300), and shall be punished for each offense by:

1. Imprisonment for not more than one (1) year;

2. A fine of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. or 2. of this paragraph.

(d) Where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300), a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a felony and shall be punished for each offense by:

1. Imprisonment for not less than one (1) year nor more than five (5) years;

2. A fine of not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violations, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(e) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in Section 36 of this Act for the purpose of depriving one or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium, shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.

(f) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner, in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer, in

the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any arbitrator, administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

SECTION 48. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Within sixty (60) days of the effective date of this Act, the licensed workers' compensation advisory organizations shall file with the commissioner an estimate of changes in prospective workers' compensation losses attributable to any net savings under this Act. Within sixty (60) days of receipt of the workers' compensation filing, the commissioner shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.

(2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under this Act for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the commissioner as provided in KRS 304.13-051(2).

(3) Unless the commissioner enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).

(4) Notwithstanding the provisions of KRS 304.13-051 to the contrary, no insurer providing workers' compensation insurance shall place into effect any rates, manuals, or underwriting rules for workers' compensation insurance which it proposes to use pursuant to subsections (1) or (4) of KRS 304.13-051 if the rates, manuals, or underwriting rules will result in an increase of more than fifteen percent (15%) from the workers' compensation insurer's then-existing workers' compensation insurance rates for any classification of risks in any of its rating territories within a twelve (12) month period of time.

(5) Any workers' compensation insurer which proposes to change its then-existing rates, manuals, or underwriting rules so as to effectively increase the rates of any classification of risks within any rating territory more than fifteen percent (15%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the commissioner pursuant to the provisions of KRS 304.13-051.

SECTION 49. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of this chapter, the commissioner shall evaluate alternate methods of establishing workers' compensation insurance rates for employers in the construction industry and may by administrative regulation prescribe that insurance carriers or rating organizations licensed under KRS 304.13-091 develop a method of computing workers' compensation premiums that does not discriminate against or penalize employers in the construction industry solely because they pay higher wages than other employers to workers in the same job classification.

SECTION 50. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) Each employer subject to KRS Chapter 342 shall file annually with the Revenue Cabinet, in accordance with administrative regulations, a report providing the policy number and the name and address of the employer's workers' compensation insurance carrier.

(2) The report may be made available to other state agencies notwithstanding the confidentiality provisions of KRS 131.190.

Section 51. KRS 304.13-161 is amended to read as follows:

(1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.

(2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the commissioner for further review of the application of the rating system. The commissioner shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The commissioner may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.

(3) For workers' compensation coverage, each insurer or agent shall notify in writing each insured at the time a workers' compensation insurance policy is issued, or renewed on or after May 1, 1997, of the insured's rights afforded by this section. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in the manner and format prescribed through administrative regulations promulgated by the commissioner.

Section 52. KRS 304.13-415 is amended to read as follows:

(1) Every employer ***that***~~[, or its designated agent, which]~~ is assigned an experience modification factor for workers' compensation in order to determine its workers compensation premium shall be furnished~~[upon request]~~ without charge a complete copy of the data and calculations of the experience modification by the insurance company or any entity to which the insurance company may delegate the duty of calculating and promulgating the experience modification or, if applicable, by any self-insurance group of which the employer is a member.

(2) Experience modification shall be based upon all payrolls and claims experience for the applicable period regardless of whether the employer was insured by an insurance company, was a member of a self-insurance group, or was a member of the Kentucky Workers' Compensation Assigned Risk Plan for part or all of the period.

(3) For each workers' compensation insurance policy issued or renewed on or after May 1, 1997, the workers' compensation insurer or the licensed advisory organization shall provide, in accordance with subsection (1) of this section, the policyholder with a written explanation of the policyholder's experience modification factor and the data and methodology utilized in the calculation of the factor.

(4) The commissioner shall promulgate administrative regulations to establish the guidelines for application of the experience modification factors.

Section 53. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the ***arbitrator or*** administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

Section 54. KRS 342.040 is amended to read as follows:

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid except that if the ***arbitrator or*** administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate, or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

(2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the ***arbitrator or*** administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.

(3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the ***arbitrator or*** administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.

(4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Section 55. KRS 342.090 is amended to read as follows:

Payment of death benefits in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the ***arbitrator or*** administrative law judge shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the ***arbitrator or*** administrative law judge directing payment, persons receiving payment under such order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

Section 56. KRS 342.160 is amended to read as follows:

(1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the ***arbitrator or*** administrative law judge. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.

(2) If the dependents are a widow, widower or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator or next friend of such dependents.

Section 57. KRS 342.205 is amended to read as follows:

(1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the ***arbitrator or*** administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.

(2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.

(3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

(4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the ***arbitrator or*** administrative law judge may require.

(5) The department shall supply forms for the report.

Section 58. KRS 342.240 is amended to read as follows:

The department shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The commissioner shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the ***arbitrators and*** administrative law judges, on which shall be inserted the words "Department of Workers' Claims, State of Kentucky, official seal." The board***, the arbitrators,*** and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the commissioner, all actions or proceedings against the board or a member in his official capacity, or against an ***arbitrator or*** administrative law judge or the commissioner in his official capacity shall be brought in the courts of Franklin County.

Section 59. KRS 342.245 is amended to read as follows:

All proceedings of the board***, arbitrators,*** and the administrative law judges shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim or proceeding considered, heard or passed upon by each ***arbitrator,*** administrative law judge and the board, with the award, finding or decisions made thereon.

Section 60. KRS 342.260 is amended to read as follows:

(1) The commissioner shall prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the ***arbitrators and*** administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.

(2) The commissioner shall develop or adopt life expectancy tables for use in making computations for the apportionment of

benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The commissioner may adopt life tables published by the U.S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an ***arbitrator or*** administrative law judge shall apply to computations concerning that opinion, award, or settlement.

(3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any ***arbitrator or*** administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(4) The sheriff shall serve all subpoenas of the board, ***arbitrators,*** and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any ***arbitrator or*** administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.

(5) The Circuit Court shall, on application of the board, any member thereof, or any ***arbitrator or*** administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Section 61. KRS 342.305 is amended to read as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the ***arbitrator or*** administrative law judge, or of an order or decision of the ***arbitrator,*** administrative law judge, or board, or of an award of the ***arbitrator or*** administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals shall be modified to conform to any decision of the ***arbitrator or*** administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Section 62. KRS 342.310 is amended to read as follows:

(1) If any ***arbitrator,*** administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorney fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.

(2) If any ***arbitrator,*** administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that a party has committed acts in violation of KRS 342.335(1) or (2), that party may be ordered to make restitution for any compensation paid as a result of the commission of such acts.

Section 63. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 64. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each ***arbitrator and*** administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the commissioner deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the commissioner to publish and distribute among employers and employees any general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

Section 65. KRS 342.700 is amended to read as follows:

(1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured

employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).

(2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an ***arbitrator or*** administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

(3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Section 66. KRS 342.710 is amended to read as follows:

(1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.

(2) The commissioner shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.

(3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. In all such instances, the ***arbitrator or*** administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The ***arbitrator or*** administrative law judge on his own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, the ***arbitrator or*** administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the ***arbitrator or*** administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

(4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.

(5) Refusal to accept rehabilitation pursuant to an order of an ***arbitrator or*** administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

(6) The commissioner shall cooperate on a reciprocal basis with the Department of Vocational Rehabilitation and the Department for Employment Services of the Kentucky Cabinet for Workforce Development. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Department of Vocational Rehabilitation or Department for Employment Services following the refusal by the employer or his insurance carrier to provide such services, the ***arbitrator or*** administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or

his insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.

(7) Prior to an order from an ***arbitrator or*** administrative law judge, the provisions of this section shall not be mandatory.

Section 67. KRS 342.735 is amended to read as follows:

The commissioner shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The commissioner may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an ***arbitrator or*** administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the ***arbitrator or*** administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

Section 68. KRS 342.780 is amended to read as follows:

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the ***arbitrator or*** administrative law judge shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

Section 69. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

(1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and

(2) Has not made a deposit of security, indemnity, or bond acceptable to the commissioner to secure the payment of compensation liability; and

(3) Has failed to make payment of compensation according to the terms of that award,

the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the ***arbitrator or*** administrative law judge relative to the claim as certified by the commissioner and to state that there is due to plaintiff on account of the opinion, order, or award of the ***arbitrator or*** administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

Section 70. KRS 342.318 is amended to read as follows:

The provisions of KRS 342.316***(4)***[~~(3)~~] shall apply to employees' asbestos-related disease claims filed on or after July 15, 1986.

Section 71. KRS 342.329 is amended to read as follows:

(1) The commissioner shall establish ***a division of***[~~an~~] Ombudsman ***and Workers' Compensation Specialist Services***[~~program~~]. The functions of the ***division***[~~ombudsman~~] shall include:

(a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;

(b) Responding to inquiries and complaints relative to the workers' compensation program;

(c) Advising all parties of their rights and obligations under this chapter;[~~ and~~]

(d) ***Assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and***

(e) Performing other duties as required by the commissioner through administrative regulations promulgated by the commissioner.

(2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.

(3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.

(4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the ***division***~~[ombudsman program]~~.

Section 72. KRS 393.082 is amended to read as follows:

(1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or commissioner's designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.

(3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.

(4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

(5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.

(6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.

(7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or commissioner's designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.

(8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.

(9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency or employee, beyond that expressly set forth in a comprehensive distribution plan.

(10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.

(11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the

investment income of the trust fund.

(12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by[~~ subsection (1) of~~] KRS 342.320, as well as the approval of the commissioner or the commissioner's designee.

(13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

Section 73. KRS 342.155 is amended to read as follows:

Whenever the administrative law judge considers it expedient, any lump sum which is paid as provided in ***this chapter***[~~KRS 342.150 hereof~~] shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties and liabilities of the trustee shall be determined by the general laws of this state.

Section 74. KRS 342.352 is amended to read as follows:

(1) The commissioner may establish one (1) or more[~~ pilot~~] programs for interested employers of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth and may promulgate any administrative regulations necessary to implement the provisions of this subsection. The integrated management of such claims shall in no event affect any benefits, rights, or coverage established pursuant to a workers' compensation insurance policy. Treatment for work-related conditions shall not be subject to either copayments or deductibles. The commissioner shall make a report comparing the results of each[~~ pilot~~] program to the expected results under traditional workers' compensation insurance and traditional workers' compensation with a managed care program. The[~~ pilot~~] program shall serve as a tentative model for future experiments.

(2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the commissioner, in consultation with the commissioner of the Department of Insurance.

(3) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of the Department of Insurance.

(4) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under this chapter, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by this chapter.

(5) The participants in a[~~ pilot~~] project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the commission.

(6) Each agency of state government shall cooperate with the commissioner if requested to provide information for the purposes of this section.

SECTION 75. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds and declares that the awards of workers' compensation benefits for coal workers' pneumoconiosis (black lung) have placed a substantial financial burden on all employers of the Commonwealth through the special fund assessments imposed on all employers to cover the liabilities of the special fund.

(2) The General Assembly finds and declares that the purpose of creating the Kentucky Coal Workers' Pneumoconiosis Fund in Section 34 of this Act is to assure that liabilities incurred as a result of workers' compensation awards for coal workers' pneumoconiosis with dates of last exposure after the effective date of this Act shall be the financial responsibility of employers engaged in severance and processing of coal.

(3) Therefore, it is the intent of the General Assembly in imposing the assessments required in paragraphs (a) and (b) of subsection (4) of Section 34 of this Act to assure that liabilities incurred as a result of workers' compensation awards for coal workers' pneumoconiosis with dates of last exposure after the effective date of this Act shall be the financial responsibility of employers engaged in the severance and processing of coal.

Section 76. KRS 42.4582 is amended to read as follows:

(1) There is hereby established in the State Treasury a fund entitled "Local Government Economic Development Fund." The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallotted or unencumbered balances in the

fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be prorated for grants to counties according to the allotment schedule set out in KRS 42.4592.

(2) Moneys shall be transferred from the general fund into this fund according to the following schedule:

(a) Effective July 1, 1992, an amount equal to fifteen percent (15%) of the severance and processing taxes on coal collected annually;

(b) Effective July 1, 1993, an amount equal to eighteen percent (18%) of the severance and processing taxes on coal collected annually;

(c) Effective July 1, 1994, an amount equal to twenty-five percent (25%) of the severance and processing taxes on coal collected annually; and

(d) Effective July 1, 1995, ***and thereafter,*** an amount equal to fifty percent (50%) of the severance and processing taxes on coal collected annually ***unless otherwise amended by the budget bill***.

The transfers shall be made quarterly, based upon the revenue estimates prevailing at the time each quarterly transfer is due, except that the last quarterly transfer shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual transfer required by this subsection. ***The quarterly calculation and transfer of funds pursuant to subsection (2)(d) of this section shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission as required by KRS 342.122.***

Section 77. KRS 42.4585 is amended to read as follows:

(1) A portion of each quarterly transfer of moneys provided for in KRS 42.4582 shall be transferred from the local government economic development fund into the local government economic assistance fund according to the following schedule:

(a) Effective July 1, 1992, an amount equal to eighty percent (80%) of each quarterly transfer;

(b) Effective July 1, 1993, an amount equal to sixty-six and seven-tenths percent (66.7%) of each quarterly transfer;

(c) Effective July 1, 1994, an amount equal to forty-eight percent (48%) of each quarterly transfer; and

(d) Effective July 1, 1995, ***and thereafter,*** an amount equal to twenty-four percent (24%) of each quarterly transfer.

The transfers shall be made quarterly.

(2) The amount transferred annually from the local government economic development fund into the local government economic assistance fund under the provisions of subsection (1) of this section shall not be less than an amount equal to ***thirteen percent (13%)***~~[twelve percent (12%)]~~ of the severance and processing taxes on coal collected annually.

(3) The quarterly calculation and transfer of funds pursuant to subsections (1) and (2) of this section shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.

SECTION 78. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The board of directors of the following funds shall make quarterly reports according to generally-accepted accounting principles of all money received and disbursed by the listed funds during each quarter to the Legislative Research Commission. The funds which shall be reported are:

(a) Kentucky individual self-insurance guaranty fund;

(b) Kentucky group self-insurance fund; and

(c) Kentucky coal employers self-insurance fund.

(2) The director of the Division of the Kentucky Coal Workers' Pneumoconiosis Fund shall make quarterly reports according to generally-accepted accounting principles of all money received and disbursed by the fund during each quarter to the Legislative Research Commission.

(3) The Department of Workers' Claims shall make quarterly reports to the Legislative Research Commission on the status of the provisions of this chapter.

Section 79. The following KRS sections are repealed:

342.1201 Findings and declarations relating to special fund assessments.

342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart -- Limit on special fund's liability for all other injury claims.

342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician -- Report -- Fees and expenses -- Decision of administrative law judge.

342.150 Lump-sum compensation -- When and how made.

342.720 Burial expense.

Section 80. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 81. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Subsequent administrative savings as a result of the implementation of this Act shall be used to defray the special fund assessment on all employers in the Commonwealth.

Section 82. The General Assembly finds and declares that workers who incur injuries covered by KRS Chapter 342 are not assured that prescribed benefits will be promptly delivered, mechanisms designed to establish the long-term solvency of the special fund have failed to reduce its unfunded liability, and many of the Commonwealth's employers are placed at a competitive disadvantage due to the cost of securing workers' compensation insurance coverage. These circumstances threaten the vitality of the Commonwealth's economy and the jobs and well-being of its workforce. Whereas it is in the interest of all citizens that the provisions of this Act shall be implemented as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Representative Stumbo moved that the rules be suspended to place **HB 1**, with Committee Substitute No. 2 attached thereto, in the Orders of the Day for Friday, December 6, 1996. Agreed.

Representative Stumbo moved that no other business be conducted on this floor today except for the filing of floor amendments. Agreed. Representative Stumbo moved that when the House does adjourn, it does so by voice vote. Agreed. Representative Stumbo moved that when the House does adjourn on this day, it does so until 10:00 a.m., Friday, December 6, 1996. Agreed.

Recess

Representative Stumbo moved that the House recess until 6:00 p.m. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

The following member filed a request to have his name added as co-sponsor of a Bill: **HB 1**, Jack Coleman.

Recess

Representative Stumbo moved that the House recess until 10:00 p.m. Agreed. At the appointed hour, the Speaker resumed the Chair and called the House to order.

Floor Amendments (Cont.)

Floor Amendment No. 4 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 41, line 19, after the period "." by deleting the remainder of the line in its entirety; and

On page 41, by deleting lines 20 and 21 in their entirety; and

On page 41, line 22 by deleting "***assigned to the other administrative law judges pursuant to this chapter.***".

Floor Amendment No. 5 to Committee Substitute No. 2 to **HB 1**, by Representative DeWeese:

On page 49, on line 1, after "***schools***" by inserting "***to select a panel of appropriate specialists***"; and

On page 49, on line 3, after "***(1)***" by inserting "***or more of the specialists***" and by deleting "***of the medical schools***"; and

On page 49, line 4, after "***issue.***" by inserting "***On July 15 of each year the panel shall be reviewed and members reappointed or new members selected to perform evaluations.***"

Floor Amendment No. 6 Committee Substitute No. 2 to **HB 1**, by Representative Mason:

On page 143, after line 4 but before line 5 by inserting the following:

"Section 79. KRS 342.690 is amended to read as follows:

(1) If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer

at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director or an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director.

(2) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this chapter and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.

(3) An employer shall retain all common law defenses against any action by an employee who elects not to be covered, as provided under subsection (6) of KRS 342.650.

(4) An employee shall retain the right to bring a cause of action pursuant to KRS 304.12-230 against a workers' compensation insurer or individual and group workers' compensation self-insurers."; and

On page 143, line 5 by deleting "79" and inserting in lieu thereof "80"; and

On page 143, line 15 by deleting "80" and inserting in lieu thereof "81"; and

On page 143, line 23 by deleting "82" and inserting in lieu thereof "83".

Floor Amendment No. 7 to Committee Substitute No. 2 to **HB 1**, by Representative Mason:

On page 23, line 14 after the first "***and***" by inserting "***after***" and by deleting "***notwithstanding and prior to***"; and

On page 112, on line 21 by deleting "***prior to*** " and inserting in lieu thereof "***after***"; and

On page 112, on line 23 by deleting "***, and notwithstanding KRS***"; and

On page 112, beginning with line 24 by deleting lines 24 through 26 in their entirety; and

On page 112, on line 27 by deleting "***Special Funds, shall be adjusted accordingly***"; and

On page 141, by deleting lines 21 to 27 in their entirety; and

On page 142, by deleting lines 1 to 16 in their entirety; and

On page 142, line 17, by deleting "78" and inserting in lieu thereof "77"; and

On page 143, line 5, by deleting "79" and inserting in lieu thereof "78"; and

On page 143, line 15, by deleting "80" and inserting in lieu thereof "79"; and

On page 143, line 19, by deleting "81" and inserting in lieu thereof "80"; and

On page 143, line 23, by deleting "82" and inserting in lieu thereof "81".

Floor Amendment No. 8 to Committee Substitute No. 2 to **HB 1**, by Representative Nunn:

On page 114, line 7, following the first "than", by inserting "***five***", and by placing brackets around and striking through "one", and, following the first "dollars", by inserting "***($500)***", and by placing brackets around and striking through "($100)", and, following the second "than" by inserting "***five***", and by placing brackets around and striking through "one"; and

On page 114, at the beginning of line 8, by inserting "***($5,000)***", and by placing brackets around and striking through "($1,000)", and, following the period, by inserting "***Penalties imposed by this subsection shall be paid directly to the injured worker. Reasonable attorney's fees shall be allowed for any legal action necessary to impose and collect the penalties imposed by this subsection, subject to the provisions of KRS 342.320.***"

Floor Amendment No. 9 to Committee Substitute No. 2 to **HB 1**, by Representative Vincent:

On page 29, line 18, after "***.***", by inserting "***However, an employee who suffers a third degree burn injury covering ten percent (10%) or more of the body that is compensable by this chapter may reopen the claim during the compensable period by submitting objective medical evidence of worsening impairment due to the condition caused by the injury.***".

Floor Amendment No. 10 to Committee Substitute No. 1 to **HB 1**, by Representative Vincent:

On page 26, line 4, after "***injury***", by inserting "***or a third degree burn injury covering ten percent (10%) or more of the body, if the worsening condition of the burn injury is substantiated by objective medical evidence.***".

Floor Amendment No. 11 to Committee Substitute No. 2 to **HB 1**, by Representative Jensen:

On page 65, delete lines 21 through 27 in their entirety;
On page 66, delete lines 1 through 5 in their entirety; and
On page 66, line 6, delete "***(9)***" and insert in lieu thereof "***(8)***".

Floor Amendment No. 12 to Committee Substitute No. 1 to **HB 1**,

by Representative Jensen:

On page 54, delete line 27 in its entirety; and
On page 55, delete lines 1 through 10 in their entirety.

Floor Amendment No. 13 to Committee Substitute No. 2 to **HB 1**, by Representative Jensen:

On page 61, delete line 27 in its entirety;
On page 62, delete lines 1 through 7 in their entirety;
On page 62, line 8, delete "***(d)***" and insert in lieu thereof "***(c)***";
On page 62, line 11, delete the first"***,***" and insert in lieu thereof "***and***";and
On page 62, line 11, delete "***, and (c)***".

Floor Amendment No. 14 to Committee Substitute No. 2 to **HB 1**, by Representative L. Clark:

On page 143, after line 4 but before line 5 by inserting the following:

"Section 79. KRS 342.680 is amended to read as follows:

(1) In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify as confirmed by competent medical evidence and where there is unrebutted prima facie evidence that indicates that the injury was work related, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was work related, that sufficient notice of the injury has been given, and that the injury or death was not proximately caused by the employee's intoxication or by his willful intention to injure or kill himself or another.

(2) There shall exist a rebuttable presumption that the heart or lung disease in a firefighter, whether he is a regular-call volunteer or a member of a fire department, is occupationally related."; and

On page 143, line 5 by deleting "79" and inserting "80" in lieu thereof; and
On page 143, line 15 by deleting "80" and inserting "81" in lieu thereof; and
On page 143, line 19 by deleting "81" and inserting "82" in lieu thereof; and
On page 143, line 23 by deleting "82" and inserting "83" in lieu thereof.

Floor Amendment No. 15 to Committee Substitute No. 2 to **HB 1**, by Representative Lindsay:

On page 78, lines 12 through 18, by deleting lines 12 through 18 in their entirety.

Floor Amendment No. 16 to Committee Substitute No. 2 to **HB 1**, by Representative Lindsay:

On page 78, line 20, before the word "The" delete the subsection number "***(1)***"; and

On page 78, line 22, delete "***(a)***" and remove the brackets and strikethroughs from the subsection number "(1)"; and

On page 78, line 27, delete "***(b)***" and remove the brackets and strikethroughs from the subsection number "(2)"; and

On page 79, line 1, delete "***(c)***" and remove the brackets and strikethroughs from the subsection number "(3)"; and

On page 79, line 16, delete "***(d)***" and remove the brackets and strikethroughs from the subsection number "(4)"; and

On page 79 line 18, delete "***(e)***" and remove the brackets and strikethroughs from the subsection number "(5)"; and

On page 79, line 18, delete "***paragraph (d)***" and remove the brackets and strikethroughs from the word and number "subsection (4)"; and

On page 79, line 19, delete "***subsection***" and remove the brackets and strikethroughs from the word "section"; and

On page 79, lines 25 through 27, by deleting lines 25 through 27 in their entirety; and

On page 80, lines 1 through 5, by deleting lines 1 through 5 in their entirety.

Floor Amendment No. 17 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 23, line 19, by deleting "***each year beginning with***" and inserting in lieu thereof the word "***in***"; and

On page 23, line 19, by deleting "***and all fiscal years***"; and

On page 23, line 20, by deleting "***thereafter. The annual***" and inserting in lieu thereof "***. This***"; and

On page 23, line 21, by deleting "***These transfers***" and inserting in lieu thereof "***This transfer***"; and

On page 23, line 22, by deleting the second "***each***" and inserting in lieu thereof "***the***"; and

On page 110, line 16, by deleting "***each***" and inserting in lieu thereof "***the***";

On page 110, line 17, by deleting "***biennium period***" and inserting in lieu thereof "***fiscal year***"; and

On page 110, line 17, by deleting "***and for each***"; and

On page 110, line 18, by deleting "***biennium thereafter,***";and

On page 110, line 25, by deleting "***each***"; and

On page 110, line 25, by deleting "***of the biennium***" and inserting in lieu thereof "***1998***"; and

On page 42, line 1, by deleting "***have***" and inserting in lieu thereof "***be an attorney licensed to practice law in Kentucky with***"; and

On page 46, line 18, by deleting "***Except where compelling circumstances justify delay and***"; and

On page 46, line 22, after "***relief***" by inserting "***. If any portion of a claim is not decided by the arbitrator within ninety (90) days of the assignment, the claim shall be immediately transferred to an administrative law judge for further proceedings***"; and

On page 61, by deleting lines 7 to 27, and inserting in lieu thereof the following:

"Section 17. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge ***or arbitrator*** pursuant to the statutes and administrative regulations. In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable in the case of death and then by the use of the Remarriage Tables of the Dutch Royal Insurance Institute. However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000). The ***arbitrator or*** administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the ***arbitrator or*** administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The ***arbitrator or*** administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in

an award of an attorney's fee not exceeding seven hundred fifty dollars ($750). The date of injury or last exposure shall control the applicable maximum attorney's fee, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750).

(2) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ***arbitrator or*** administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the ***written determination of an arbitrator or*** last appealable order of ***an***[~~the~~] administrative law judge. The attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The ***arbitrator or*** administrative law judge, upon request of the ***employee***[~~claimant~~], may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(3) The attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(4) The General Assembly declares that by the enactment of KRS 342.316(2)(b), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ***and arbitrator*** shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(5) The ***arbitrator or*** administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the ***arbitrator or*** administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated below are followed:

(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).

(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.

(6) (a) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ***arbitrator or*** administrative law judge. In awarding the attorney's fee, the ***arbitrator or*** administrative law judge shall consider the factors set forth in subsection (1) of this section.

(b) Thereafter, the ***arbitrator or*** administrative law judge shall fix the attorney's fee. No attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any attorney's fee be allowed or approved exceeding the amounts provided in subsection (1) of this section applicable to any additional amount recovered. If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee."; and

By deleting pages 62 to 65 in their entirety; and

On page 66, by deleting lines 1 to 8 in their entirety; and

On page 80, by deleting lines 14 to 27, and by inserting in lieu thereof the following:

"Section 30. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For total disability due to a work-related injury or occupational disease, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related disability shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

(b) For permanent, partial disability, where an employee returns to work at a wage equal to or greater than the employee's preinjury wage, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of impairment caused by the injury or occupational disease as determined by

"Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(d) For permanent, partial disability, if an employee sustains impairment or disability in excess of fifty percent (50%) as a result of a work-related injury or occupational disease and prior work-related active disability the compensable permanent partial disability period shall then be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection.

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday.

(5) Except as provided in KRS 342.732, and notwithstanding any other provision of this chapter to the contrary:

(a) If an employee returns to work at the same job that the employee was performing at the time of the injury, and with the same or higher wage, then the employee may receive an impairment rating, but shall not receive any income benefits awarded in a claim made under this chapter for the period that the employee continues to work at that same job at the same or higher wage.

(b) If an employee returns to work at the same job that the employee was performing at the time of the injury at a wage that is less than the wage that the employee was earning at the time of the injury, then any income benefits awarded in a claim made under this chapter shall not exceed an amount that, when added to the employee's current wage, exceeds the wage that the employee was earning at the time of the injury.

(c) If an employee fails to return to work because the employer refuses to return the employee to work because of the work injury or impairment, the arbitrator or administrative law judge shall consider occupational factors including, but not limited to, age, education, and geographic location, in addition to the impairment rating set forth in the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available. "; and

By deleting the entirety of pages 81 to 86; and

On page 87, by deleting line 1; and

On page 91, by deleting lines 20 to 27 and inserting in lieu thereof the following:

"Section 33. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits[~~ and retraining incentive benefits~~] for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X-rays and reports of the X-rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only ***income***[~~retraining incentive~~] benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not ***less than ten (10) weeks and not*** to exceed two hundred and eight (208) weeks. These benefits may be[~~ paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be~~] collected semimonthly as provided in KRS 342.040.[~~ While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved under administrative regulations to be promulgated by the commissioner, benefits awarded under this paragraph shall be paid directly to the institution conducting the training or education program on a semimonthly basis. The benefit shall not be paid for a period in which the employee ceases to participate in the program.~~] In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) ***If the administrative law judge finds that any employee has a radiographic classification of category 2/1, 2/2, or 2/3 based on the latest ILO Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) x-rays and reports of the x-rays which conform to the standards for x-rays contained in subsection (2) of KRS 342.316, he shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but no more than seventy-five percent (75%) of the state average as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period of not less than two hundred eight (208) weeks but not to exceed three hundred twenty-five (325) weeks. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance of processing of coal.***

(c) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1,[~~ or~~] 1/2, ***2/1, 2/2, or 2/3*** based on the latest ILO International Classification of Radiographics, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association, there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee has an occupational disability rating of seventy-five percent (75%) resulting from exposure to coal dust and the administrative law judge shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of seventy-five (75%) but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period ***of not less than three hundred twenty-five (325) weeks, but*** not to exceed four hundred and twenty-five (425) weeks, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d)[~~(c)~~]If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1,[~~ or~~] 1/2, ***2/1, 2/2, or 2/3,*** based on the latest ILO International Classification of Radiographics, ***resulting from exposure to coal dust,*** and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ***seventy-five***[~~one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(e)[~~(d)~~]If the administrative law judge finds that an employee has occupational pneumoconiosis with a radiographic classification of category[~~ 2/1, 2/2, 2/3,~~] 3/2, 3/3, or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, ***resulting from exposure to coal dust,*** there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ***seventy-five***[~~one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the ***most reliable***[~~largest~~] forced vital capacity (FVC) value or the ***most reliable*** [~~largest~~] forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

(4) In no event shall income benefits awarded under paragraphs (a)***,***[~~ or~~] (b)***, or (c)*** of subsection (1) of this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

(5) The employer or employers responsible for the payment of benefits awarded under this section shall pay those benefits for which they are responsible in accordance with the provisions in KRS 342.316."; and

By deleting the entirety of pages 92 to 96; and

On page 97, by deleting lines 1 to 8 in their entirety; and

On page 143, by inserting after line 4 the following:

"SECTION 79. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The provisions of this Act shall apply to any claim involving an injury or date of last exposure occurring on or after the effective date of this Act. This Act shall not affect any substantive issues or procedural matters relating to any claim

involving an injury or date of last exposure occurring prior to the effective date of this Act.

SECTION 80. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

In addition to an employee's right to reject the provisions of this chapter under KRS 342.395, any employee subject to the provisions of this chapter shall have ninety (90) days after the effective date of this Act to file a written notice of rejection, under KRS 342.395, of the provisions of this chapter. Employees subject to the provisions of this chapter shall continue to be covered by this chapter unless a notice of rejection is filed."; and

On page 143, line 5, by deleting "79" and inserting in lieu thereof "81"; and

On page 143, line 15, by deleting "80" and inserting in lieu thereof "82"; and

On page 143, line 19, by deleting "81" and inserting in lieu thereof "83"; and

On page 143, line 23, by deleting "82" and inserting in lieu thereof "84".

Floor Amendment No. 18 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 91, by deleting lines 20 to 27 and inserting in lieu thereof the following:

"Section 33. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits[~~ and retraining incentive benefits~~] for occupational pneumoconiosis resulting from exposure to coal dust shall be paid as follows:

(a) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X-rays and reports of the X-rays which conform to the standards for X-rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only ***income***[~~retraining incentive~~] benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not ***less than ten (10) weeks and not*** to exceed two hundred and eight (208) weeks. These benefits may be[~~ paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be~~] collected semimonthly as provided in KRS 342.040.[~~ While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved under administrative regulations to be promulgated by the commissioner, benefits awarded under this paragraph shall be paid directly to the institution conducting the training or education program on a semimonthly basis. The benefit shall not be paid for a period in which the employee ceases to participate in the program.~~] In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) ***If the administrative law judge finds that any employee has a radiographic classification of category 2/1, 2/2, or 2/3 based on the latest IL0 Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) x-rays and reports of the x-rays which conform to the standards for x-rays contained in subsection (2) of KRS 342.316, he shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but no more than seventy-five percent (75%) of the state average as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period of not less than two hundred eight (208) weeks but not to exceed three hundred twenty-five (325) weeks. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance of processing of coal.***

(c) If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1,[~~ or~~] 1/2, ***2/1, 2/2, or 2/3*** based on the latest ILO International Classification of Radiographics, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association, there shall be ***a rebuttable***[~~an irrebuttable~~] presumption that the employee has an occupational disability rating of seventy-five percent (75%) resulting from exposure to coal dust and the administrative law judge shall award an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of seventy-five (75%) but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period ***of not less than three hundred twenty-five (325) weeks, but*** not to exceed four hundred and twenty-five (425) weeks, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d)~~[(c)]~~If the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1,~~[or]~~ 1/2, ***2/1, 2/2, or 2/3,*** based on the latest ILO International Classification of Radiographics, ***resulting from exposure to coal dust,*** and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, there shall be ***a rebuttable***~~[an irrebuttable]~~ presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ***seventy-five***~~[one hundred]~~ percent ***(75%)***~~[(100%)]~~ of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(e)~~[(d)]~~If the administrative law judge finds that an employee has occupational pneumoconiosis with a radiographic classification of category~~[2/1, 2/2, 2/3,]~~ 3/2, 3/3, or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, ***resulting from exposure to coal dust,*** there shall be ***a rebuttable***~~[an irrebuttable]~~ presumption that the employee is totally disabled resulting from exposure to coal dust and the administrative law judge shall award income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ***seventy-five***~~[one hundred]~~ percent ***(75%)***~~[(100%)]~~ of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall a claim be filed under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the ***most reliable***~~[largest]~~ forced vital capacity (FVC) value or the ***most reliable*** ~~[largest]~~ forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

(4) In no event shall income benefits awarded under paragraphs (a)***,***~~[or]~~ (b)***, or (c)*** of subsection (1) of this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

(5) The employer or employers responsible for the payment of benefits awarded under this section shall pay those benefits for which they are responsible in accordance with the provisions in KRS 342.316."; and

By deleting the entirety of pages 92 to 96; and

On page 97, by deleting lines 1 to 8 in their entirety.

Floor Amendment No. 19 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 80, by deleting lines 14 to 27, and by inserting in lieu thereof the following:

"Section 30. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For total disability due to a work-related injury or occupational disease, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related disability shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

(b) For permanent, partial disability, where an employee returns to work at a wage equal to or greater than the employee's preinjury wage, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(d) For permanent, partial disability, if an employee sustains impairment or disability in excess of fifty percent (50%) as a result of a work-related injury or occupational disease and prior work-related active disability the compensable permanent partial disability period shall then be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection.

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday.

(5) Except as provided in KRS 342.732, and notwithstanding any other provision of this chapter to the contrary:

(a) If an employee returns to work at the same job that the employee was performing at the time of the injury, and with the same or higher wage, then the employee may receive an impairment rating, but shall not receive any income benefits awarded in a claim made under this chapter for the period that the employee continues to work at that same job at the same or higher wage.

(b) If an employee returns to work at the same job that the employee was performing at the time of the injury at a wage that is less than the wage that the employee was earning at the time of the injury, then any income benefits awarded in a claim made under this chapter shall not exceed an amount that, when added to the employee's current wage, exceeds the wage that the employee was earning at the time of the injury.

(c) If an employee fails to return to work because the employer refuses to return the employee to work because of the work injury or impairment, the arbitrator or administrative law judge shall consider occupational factors including, but not limited to, age, education, and geographic location, in addition to the impairment rating set forth in the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available. "; and

By deleting the entirety of pages 81 to 86; and

On page 87, by deleting line 1.

Floor Amendment No. 20 to the Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 61, by deleting lines 7 to 27, and inserting in lieu thereof the following:

"Section 17. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge ***or arbitrator*** pursuant to the statutes and administrative regulations. In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable in the case of death and then by the use of the Remarriage Tables of the Dutch Royal Insurance Institute. However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000). The ***arbitrator or*** administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the ***arbitrator or*** administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The ***arbitrator or*** administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750). The date of injury or last exposure shall control the applicable maximum attorney's fee, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750).

(2) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ***arbitrator or*** administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of

the ***written determination of an arbitrator or*** last appealable order of ***an***[~~the~~] administrative law judge. The attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The ***arbitrator or*** administrative law judge, upon request of the ***employee***[~~claimant~~], may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(3) The attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(4) The General Assembly declares that by the enactment of KRS 342.316(2)(b), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ***and arbitrator*** shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(5) The ***arbitrator or*** administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the ***arbitrator or*** administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated below are followed:

(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).

(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.

(6) (a) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ***arbitrator or*** administrative law judge. In awarding the attorney's fee, the ***arbitrator or*** administrative law judge shall consider the factors set forth in subsection (1) of this section.

(b) Thereafter, the ***arbitrator or*** administrative law judge shall fix the attorney's fee. No attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any attorney's fee be allowed or approved exceeding the amounts provided in subsection (1) of this section applicable to any additional amount recovered. If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee."; and

By deleting pages 62 to 65 in their entirety; and

On page 66, by deleting lines 1 to 8 in their entirety.

Floor Amendment No. 21 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 143, by inserting after line 4 the following:

"SECTION 79. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The provisions of this Act shall apply to any claim involving an injury or date of last exposure occurring on or after the effective date of this Act. This Act shall not affect any substantive issues or procedural matters relating to any claim involving an injury or date of last exposure occurring prior to the effective date of this Act."; and

On page 143, line 5, by deleting "79" and inserting in lieu thereof "80"; and

On page 143, line 15, by deleting "80" and inserting in lieu thereof "81"; and

On page 143, line 19, by deleting "81" and inserting in lieu thereof "82"; and

On page 143, line 23, by deleting "82" and inserting in lieu thereof "83".

Floor Amendment No. 22 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 143, by inserting after line 4 the following new section:

"SECTION 79. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

In addition to an employee's right to reject the provisions of this chapter under KRS 342.395, any employee subject to the provisions of this chapter shall have ninety (90) days after the effective date of this Act to file a written notice of rejection, under KRS 342.395, of the provisions of this chapter. Employees subject to the provisions of this chapter shall continue to

be covered by this chapter unless a notice of rejection is filed."; and

On page 143, line 5, by deleting "79" and inserting in lieu thereof "80"; and

On page 143, line 15, by deleting "80" and inserting in lieu thereof "81"; and

On page 143, line 19, by deleting "81" and inserting in lieu thereof "82"; and

On page 143, line 23, by deleting "82" and inserting in lieu thereof "83".

Floor Amendment No. 23 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 42, line 1, by deleting "***have***" and inserting in lieu thereof "***be an attorney licensed to practice law in Kentucky with***".

Floor Amendment No. 24 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 46, line 18, by deleting "***Except where compelling circumstances justify delay and***"; and

On page 46, line 22, after "***relief***" by inserting "***. If any portion of a claim is not decided by the arbitrator within ninety (90) days of the assignment, the claim shall be immediately transferred to an administrative law judge for further proceedings***".

Floor Amendment No. 25 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 23, line 19, by deleting "***each year beginning with***" and inserting in lieu thereof the word "***in***"; and

On page 23, line 19, by deleting "***and all fiscal years***"; and

On page 23, line 20, by deleting "***thereafter. The annual***" and inserting in lieu thereof "***. This***"; and

On page 23, line 21, by deleting "***These transfers***" and inserting in lieu thereof "***This transfer***"; and

On page 23, line 22, by deleting the second "***each***" and inserting in lieu thereof "***the***";and

On page 110, line 16, by deleting "***each***" and inserting in lieu thereof "***the***";

On page 110, line 17, by deleting "***biennium period***" and inserting in lieu thereof "***fiscal year***"; and

On page 110, line 17, by deleting "***and for each***"; and

On page 110, line 18, by deleting "***biennium thereafter,***";and

On page 110, line 25, by deleting "***each***"; and

On page 110, line 25, by deleting "***of the biennium***" and inserting in lieu thereof "***1998***".

Floor Amendment No. 26 to Committee Substitute No. 2 to **HB 1**, by Representative Gray:

On page 116, after line 4 by adding the following language

"***(k) Any employer who fails to display the notice option or any of the mandated provisions set forth in Section 83 or 84 of this Act shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) for each violation.***"; and

On page 118, line 16 after "(7)" insert "***(a) to (e)***"; and

On page 118, after line 20 by adding the following language:

"***(12) Fines paid pursuant to subsection (7)(f) of this section shall be paid into the Labor Cabinet to be used to defray the cost of the notice posters and the oversight duties set forth in Section 83 of this Act.***"; and

On page 143, between lines 22 and 23 by adding the following language and renumbering the remaining section accordingly:

"Section 82. KRS 342.690 is amended to read as follows:

(1) If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death***, unless the injured employee or the spouse of the deceased employee chooses the option to pursue a civil remedy in a court of law as set forth in subsection (1) of Section 83 of this Act***. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS

342.610, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director or an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director***, or if the employee or the spouse of a deceased employee choose to pursue a civil remedy in a court of law as set forth in subsection (1) of Section 83 of this Act***.

(2) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this chapter and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.

(3) An employer shall retain all common law defenses against any action by an employee who elects not to be covered, as provided under subsection (6) of KRS 342.650.

SECTION 83. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) An injured employee shall have the option to accept the benefits provided under this chapter or to pursue a civil remedy in a court of law.

(2) The option set forth in subsection (1) of this section shall be made within ninety (90) days from the date of first report of injury sent by the employer to the Department of Workers' Claims.

(3) If the injured employee chooses the option to pursue a civil remedy in a court of law, the employee shall notify his or her employer in writing within the ninety (90) day period set forth in subsection (2) of this section. The choice of the option to pursue a civil remedy in a court of law means that the injured employee forfeits the benefits provided under this chapter.

(4) Notice of this option shall be posted in all places of employment and shall be displayed in a conspicuous area. The notice shall be printed in bold type, with print no less than three (3) inches in height, on poster size paper, and shall read as follows: "If you are injured on the job, you may choose either to file a workers' compensation claim, or you may file a suit in a court of law. You have 90 days from the date of the first report of your injury to choose. For more information, ask your employer or call the Department of Workers' Claims in Frankfort, Kentucky."

(5) The Labor Cabinet shall provide the printed posters described in subsection (4) of this section to all Kentucky employers and to employers whose employees fall within the jurisdiction of the Department of Workers' Claims and the provisions of this chapter.

(6) The Labor Cabinet shall enforce subsection (4) of this section, and the cabinet shall promulgate administrative regulations to effectuate subsections (5) and (6) this section.

(7) Notice of the option set forth in subsections (1), (2), and (3) of this section shall be conveyed both orally and in writing by the employer to an employee when the employee notifies the employer of an injury.

(8) Notice of the option set forth in subsections (1), (2), and (3) of this section shall be included by the Department of Workers' Claims in its first communication to the injured employee following the employers' first report of injury.

SECTION 84. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In the event of the death of an employee, if the employee did not choose either option set forth in subsection (1) of Section 83 of this Act prior to his death, the spouse of the deceased employee as set forth in KRS 342.075, shall be given written notice of the option in subsections (1), (2), and (3) of Section 83 of this Act by the employer within ten (10) days of the employee's death or within ten (10) days of when the employer has knowledge of the employee's death.

(2) The ninety (90) day time frame set forth in subsection (2) of Section 83 of this Act shall not begin until the spouse of the deceased employee has received the notice from the employer set forth in subsection (1) of this section.

(3) If there are minor children and no spouse, the sole remedy shall be benefits provided under this chapter."

Floor Amendment No. 27 to Committee Substitute No. 2 to **HB 1**, by Representative Gray:

On page 83, line 15, after "(d)", through line 22, after ".", by deleting all new language, by removing all brackets and strikethroughs from existing language, and by bracketing and striking through all intervening language, and

On page 84, line 1, after "***wage***", through line 3, after "***weeks***", by deleting all new language.

Floor Amendment No. 28 to Committee Substitute No. 2 to **HB 1**, by Representative Jenkins:

On page 29, line 8, by deleting "***and***"; and

On page 29, line 9, following the first "***of***", by inserting "***occupational***", and, following "***disability***" by deleting the remainder of the line; and

On page 29, by deleting line 10 in its entirety; and

On page 29, by deleting all of line 11 and inserting "***; and***"; and

On page 29, following line 11, by inserting:

"***(e) Change of medical condition.***"; and

On page 29, by deleting lines 12 through 18 in their entirety; and

On page 29, line 19, by deleting "***(4)***" and inserting "***(2)***"in lieu thereof; and

On page 30, line 25, by deleting "***(5)***" and inserting "***(3)*** in lieu thereof, and by placing brackets around and striking through "(a)"; and

On page 31, line 1, following "pneumoconiosis" by deleting the remainder of the line; and

On page 31, by deleting line 2 in its entirety; and

On page 31, line 3, by deleting "***hazards of the disease***" and

On page 31, line 14, by deleting "***A party may file no more***"; and

On page 31, by deleting lines 15 through 20 in their entirety; and

On page 31, line 23, by deleting the closing bracket following "also", and by deleting "***retraining incentive benefits or***"; and

On page 31, at the beginning of line 21, by inserting an opening bracket, and by striking through the line in its entirety; and

On page 31, by striking through lines 23 through 27 in their entirety; and

On page 32, by striking through line 1 in its entirety and by inserting a closing bracket following the period; and

On page 32, line 2, by deleting "***(6)***" and inserting "***(4)***" in lieu thereof; and

On page 32, line 9, by deleting "***(7)***" and inserting "***(5)***" in lieu thereof; and

On page 32, by deleting lines 17 through 23 in their entirety.

Floor Amendment No. 29 to Committee Substitute No. 2 to **HB 1**, by Representative Cyrus:

On page 91, line 20, through page 97, line 8, by deleting Section 33 in its entirety; and

On page 97, line 9, by changing "SECTION 34" to "SECTION 33" and renumbering the remaining sections accordingly; and

On page 6, line 25, by changing "***36***" to "***35***"; and

On page 6, line 27, by changing "***36***" to "***35***"; and

On page 59, line 21, by changing "***34***" to "***33***"; and

On page 80, line 23, by changing "***38***" to "***37***"; and

On page 84, line 8, by changing "***38***" to "***37***"; and

On page 117, line 23, by changing "***36***" to "***35***"; and

On page 140, line 9, by changing "***34***" to "***33***"; and

On page 140, line 15, by changing "***34***" to "***33***".

Floor Amendment No. 30 to Committee Substitute No. 2 to **HB 1**, by Representative Stumbo:

On page 116, after line 4 by adding the following language

"***(k) Any employer who fails to display the notice option or any of the mandated provisions set forth in Section 83 or 84 of this Act shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) for each violation.***"; and

On page 118, line 16 after "(7)" insert "***(a) to (e)***"; and

On page 118, after line 20 by adding the following language:

"***(12) Fines paid pursuant to subsection (7)(f) of this section shall be paid into the Labor Cabinet to be used to defray the cost of the notice posters and the oversight duties set forth in Section 83 of this Act.***"; and

On page 143, between lines 22 and 23 by adding the following language and renumbering the remaining section accordingly:

"Section 82. KRS 342.690 is amended to read as follows:

(1) If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death***, unless the injured employee or the spouse of the deceased employee chooses the option to pursue a civil remedy in a court of law as set forth in subsection (1) of Section 83 of this Act***. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this chapter on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director or an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director***, or if the employee or the spouse of a deceased employee choose to pursue a civil remedy in a court of law as set forth in subsection (1) of Section 83 of this Act***.

(2) If an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this chapter and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.

(3) An employer shall retain all common law defenses against any action by an employee who elects not to be covered, as provided under subsection (6) of KRS 342.650.

SECTION 83. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) An injured employee shall have the option to accept the benefits provided under this chapter or to pursue a civil remedy in a court of law.

(2) The option set forth in subsection (1) of this section shall be made within ninety (90) days from the date of first report of injury sent by the employer to the Department of Workers' Claims.

(3) If the injured employee chooses the option to pursue a civil remedy in a court of law, the employee shall notify his or her employer in writing within the ninety (90) day period set forth in subsection (2) of this section. The choice of the option to pursue a civil remedy in a court of law means that the injured employee forfeits the benefits provided under this chapter.

(4) Notice of this option shall be posted in all places of employment and shall be displayed in a conspicuous area. The notice shall be printed in bold type, with print no less than three (3) inches in height, on poster size paper, and shall read as follows: "If you are injured on the job, you may choose either to file a workers' compensation claim, or you may file a suit in a court of law. You have 90 days from the date of the first report of your injury to choose. For more information, ask your employer or call the Department of Workers' Claims in Frankfort, Kentucky."

(5) The Labor Cabinet shall provide the printed posters described in subsection (4) of this section to all Kentucky employers and to employers whose employees fall within the jurisdiction of the Department of Workers' Claims and

the provisions of this chapter.

(6) The Labor Cabinet shall enforce subsection (4) of this section, and the cabinet shall promulgate administrative regulations to effectuate subsections (5) and (6) this section.

(7) Notice of the option set forth in subsections (1), (2), and (3) of this section shall be conveyed both orally and in writing by the employer to an employee when the employee notifies the employer of an injury.

(8) Notice of the option set forth in subsections (1), (2), and (3) of this section shall be included by the Department of Workers' Claims in its first communication to the injured employee following the employers' first report of injury.

SECTION 84. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In the event of the death of an employee, if the employee did not choose either option set forth in subsection (1) of Section 83 of this Act prior to his death, the spouse of the deceased employee as set forth in KRS 342.075, shall be given written notice of the option in subsections (1), (2), and (3) of Section 83 of this Act by the employer within ten (10) days of the employee's death or within ten (10) days of when the employer has knowledge of the employee's death.

(2) The ninety (90) day time frame set forth in subsection (2) of Section 83 of this Act shall not begin until the spouse of the deceased employee has received the notice from the employer set forth in subsection (1) of this section.

(3) If there are minor children and no spouse, the sole remedy shall be benefits provided under this chapter."

Floor Amendment No. 31 to Committee Substitute No. 2 to **HB 1**, by Representative Nesler:

On page 41, line 18, by deleting "***three***" and removing the brackets and strikethroughs from the word "one"; and

On page 41, line 19 by deleting "***($3,000)***" and removing the brackets and strikethroughs from "($1,000)"; and

On page 42, line 17 by deleting "***two***" and inserting in lieu thereof "***one***" and by deleting "***($2,000)***" and inserting in lieu thereof "***($1,000)***.

Floor Amendment No. 32 to Committee Substitute No. 2 to **HB 1**, by Representative Nesler:

On page 78, beginning with line 12 by deleting lines 12 through 18 in their entirety.

Floor Amendment No. 33 to Committee Substitute No. 2 to **HB 1**, by Representative Nesler:

On page 78, on line 12, after the word "***any***" by inserting "***commercial or industrial***".

Floor Amendment No. 34 to Committee Substitute No. 2 to **HB 1**, by Representative Nesler:

On page 78, line 20, by deleting "***(1)***"; and

On page 78, line 22 by deleting "***(a)***" and removing the brackets and strikethroughs from "(1)"; and

On page 78, line 27 by deleting "***(b)***" and removing the brackets and strikethroughs from "(2)"; and

On page 79, line 1 by deleting "***(c)***" and removing the brackets and strikethroughs from "(3)"; and

On page 79, line 16 by deleting "***(d)***" and removing the brackets and strikethroughs from "(4)"; and

On page 79, line 18 by deleting "***(e)***" and removing the brackets and strikethroughs from "(5)" and by deleting "***paragraph (d)***" and removing the brackets and strikethroughs from "subsection (4)"; and

On page 79, line 19 by deleting "***subsection***" and removing the brackets and strikethroughs from "section"; and

On page 79, beginning with line 25, by deleting lines 25 through 27 in their entirety; and

On page 80, beginning with line 1, by deleting lines 1 through 5 in their entirety.

Floor Amendment No. 35 to Committee Substitute No. 2 to **HB 1**, by Representative Gray:

On page 66, line 9, enter the following new subsection:

"***(10) Notwithstanding any provisions of law to the contrary, the provisions of this chapter shall not be construed or interpreted to prohibit non-attorney representation of injured workers covered by this chapter.***"

Floor Amendment No. 36 to Committee Substitute No. 2 to **HB 1**, by Representative Gray:

On page 118, line 26, after "***Act.***" add the following:"***On the effective date of this Act, the average insurance rate level for workers' compensation benefits required by this chapter shall be reduced by not less than twenty-five percent (25%) from the average rate level in effect immediately prior to such date. Such reduced rates shall remain in effect for at least one (1) year.***"; and

On page 119, line 1, change the word "***may***" to "***shall***"

Floor Amendment No. 37 to Committee Substitute No. 2 to **HB 1**, by Representative Gray:

Beginning on page 80, line 26 and ending on page 84, line 13, delete all intervening text and insert in lieu thereof the following:

"(b) For permanent[~~,~~] partial disability, where an employee returns to work at a wage equal to or greater than the employee's preinjury wage, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by ***the***[~~his~~] percentage of impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***times the factor set forth in the table that follows:***[~~unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section.~~]

AMA Impairment	***Factor***
0 to 5%	***1.00***
6 to 10%	***1.25***
11 to 15%	***1.50***
16 to 20%	***1.75***
21 to 25%	***2.00***
26 to 30%	***2.25***
31% and above	***2.50***

[~~The period of~~]Disability under this paragraph for nonwork-related disabilities ***and conditions previously compensated under this chapter*** shall not extend the maximum period ***or the amount*** of ***partial*** disability[~~ under this paragraph~~]. ***Impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in Section 38 of this Act shall not be considered in determining the extent of disability or the duration of payments due under this subsection.*** Any temporary ***partial or temporary*** total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(d) For permanent[~~,~~] partial disability, if an employee sustains[~~ impairment or~~] disability[~~ in excess~~] of fifty percent (50%) ***or less*** as a result of a work-related injury[~~ or occupational disease and prior work-related active disability~~] the compensable permanent partial disability period shall[~~ then~~] be ***four hundred twenty-five (425) weeks, and if the disability is greater than fifty percent (50%), the compensable permanent partial disability period shall be*** five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. ***Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds***

percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and in no event shall exceed seventy-five percent (75%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in subsection (1)(b) of this section would yield a greater percentage of disability.

(e) ***For temporary partial disability, when the employee has returned to work pursuant to an employer program to accommodate the employee's impairment with work encompassing lesser exertional requirements or shorter working days, and lower earnings than the employee's average weekly wage earned, the insurance carrier shall pay an amount equal to eighty-five percent (85%) of the employee's average weekly wage not to exceed one hundred percent (100%) of the state average wage less the actual earnings of the employee while in the accommodated duty program. Temporary partial disability benefits shall be paid for a period not to exceed fifty-two (52) weeks. An employee's refusal to accept accommodated duty employment within reasonably imposed medical restrictions shall result in a forfeiture of income benefits during the period of refusal. Disputes concerning a purported failure of an employee to accept suitable accommodated duty employment shall be resolved by an administrative law judge in expedited proceedings***[~~Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection~~].

Floor Amendment No. 38 to Committee Substitute No. 2 to **HB 1**, by Representative Rapier:

On page 143, after line 4 but before line 5 by inserting the following:

"Section 79. KRS 342.680 is amended to read as follows:

(1) In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify as confirmed by competent medical evidence and where there is unrebutted prima facie evidence that indicates that the injury was work related, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was work related, that sufficient notice of the injury has been given, and that the injury or death was not proximately caused by the employee's intoxication or by his willful intention to injure or kill himself or another.

(2) ***There shall exist a rebuttable presumption that the heart or lung disease in a firefighter, whether he is a regular-call volunteer or a member of a fire department, is occupationally related. However, the firefighter shall have the benefit of this rebuttable presumption only if there is on record reasonable medical evidence that he was free of the heart or lung disease at the beginning of his employment.***"; and

On page 143, line 5 by deleting "79" and inserting "80" in lieu thereof; and

On page 143, line 15 by deleting "80" and inserting "81" in lieu thereof; and

On page 143, line 19 by deleting "81" and inserting "82" in lieu thereof; and

On page 143, line 23 by deleting "82" and inserting "83" in lieu thereof.

Floor Amendment No. 39 to Committee Substitute No. 2 to **HB 1**, by Representative Moberly:

On page 29, line 15, after "***expenses,***", by adding "***fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work,***"; and

on page 29, line 16, after "***benefits,***" by adding "***or within two (2) years of such award or order,***"; and

on page 31, by deleting the new language on lines 14, 15, 16, 17, 18, 19,and 20; and

on page 66, after line 5, by deleting lines 6, 7, and 8.

Floor Amendment No. 40 to Committee Substitute No. 2 to **HB 1**, by Representative Moberly:

On page 143, after line 4, by adding the following new language and by renumbering the remaining sections accordingly:

"SECTION 79. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) ***If an insurance carrier, self-insurance group, or self-insured employer selling workers' compensation insurance engages in claims settlement practices which are "unfair" as set forth in KRS 304.12-230, the commissioner of the Department of Workers' Claims shall fine the insurance company, self-insurance group, or self-insured employer the sum of five hundred dollars ($500) to one thousand dollars ($1,000) for each violation and if they have a pattern of violations, the commissioner may revoke the certificate of self insurance or request the commissioner of insurance to revoke the certificate of authority of the insurance carrier.***

(2) ***This section does not create a private cause of action, but instead is to be used by the commissioner to prevent unfair***

claims settlement practices.".

Floor Amendment No. 41 to Committee Substitute No. 2 to **HB 1**, by Representative Moberly:

On page 1, line 7, by deleting "***unless the***", and by deleting line 8 in its entirety; and
on line 9, by deleting "***the work***".

Announcements

The following meetings were announced:

Education, 12:30, December 5.

Minority Caucus, Room 111, December 6.

Adjournment

Representative Callahan moved that the House adjourn until 10:00 a.m., Friday, December 6, 1996.

The motion that the House adjourn until 10:00 a.m., Friday, December 6, 1996 was adopted by voice vote.

FRIDAY, DECEMBER 6, 1996

FIFTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend David Hilton, First United Methodist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representative Morris.

Representative Ballard moved that the absent member be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 5, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed. Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the Rules be suspended for the introduction of a special guest. Agreed.

Representative Palumbo moved that the Rules be suspended to grant floor privileges to Coach Hal Mumme. Agreed.

Representative Palumbo moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Palumbo moved the adoption of the following **Legislative Citation No. 2**. Agreed.

The House of Representatives of the Commonwealth of Kentucky is honored to offer their sincerest congratulations to Hal Mumme on his appointment as the Head Coach of the University of Kentucky Wildcat Football Team. This honorable body enthusiastically joins Speaker Jody Richards in applauding the experience, exuberance and extraordinary dedication that Coach Mumme brings to this great Commonwealth, and wishes for him the fulfillment of the hopes and dreams that he brings to his new home. We further pray that he is blessed with great success and happiness as one of Kentucky's newest citizens. **Legislative Citation No. 2** was adopted without objection.

Representative Palumbo moved that a call of roll be taken to show co-sponsors of **Legislative Citation No. 2**. Agreed.

Roll call to show co-sponsors of Legislative Citation No. 2 is as follows: Adams, Adkins, Allen, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, Buis, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Curd, Cyrus, Damron, Deskins, DeWeese, Fletcher, Ford, Friend, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Heleringer, Hogancamp, Horlander, House, Jenkins, Jensen, Jordan, Kerr, Lile, Lindsay, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Coach Hal Mumme briefly addressed the House of Representatives.

Recess

Representative Stumbo moved to suspend the Rules to allow the Committee on Rules to meet upon recess. Agreed.

Representative Stumbo moved that the House recess for a Committee on Rules meeting. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report of Committees

The Clerk read the following Governor's Proclamation:

To All To Whom These Presents Shall Come: Pursuant to the power vested in me by Section 80 of the Constitution of the Commonwealth of Kentucky, I, Paul E. Patton, Governor of the Commonwealth of Kentucky, do issue this proclamation, amending my proclamation dated November 26, 1996, all the terms of which are incorporated by reference herein, and I do further hereby add the following matters to said proclamation for consideration by the General Assembly of Kentucky in Extraordinary Session at the Seat of Government, Frankfort, Kentucky:

(1) Amending or creating new sections of Kentucky Revised Statutes Chapter 131 et.seq. to establish

reporting requirements with regard to workers' compensation insurance coverage.

(2) Amend Kentucky Revised Statutes Chapters 42 and 143 to provide for the payment of existing Special Fund liability by re-directing coal severance tax revenue collections.

(3) Amend or create new sections of the Kentucky Revised Statutes as may be deemed necessary to preserve, reform, or make more competitive Kentucky workers' compensation system.

DONE AT THE CAPITOL, in the City of Frankfort, this the 5th day of December in the year of our Lord One Thousand Nine Hundred and Ninety-Six and in the year of the Commonwealth the Two Hundred and Fifth.

Representative Stumbo moved that the Rules be suspended to allow introductions and to grant floor privileges to guests. Agreed.

Calendar

HB 2 taken from the Calendar and ordered read at length for the second time. Representative Stumbo moved that it be read by title only. Agreed by a majority of members elected. Ordered referred to the Committee on Rules.

Representative Stumbo moved to suspend the Rules to place **HB 2** in the Orders of the Day for December 6 or December 9, 1996. Agreed.

Orders of the Day

HB 1, with Committee Substitute No 2. and Floor Amendments attached thereto, taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Moberly moved the adoption of the Committee Substitute No. 2 to **HB 1**. Agreed.

Representative Moberly moved the adoption of Floor Amendment No. 40 to Committee Substitute No. 2 to **HB 1**. Agreed.

Representative Moberly moved the adoption of Floor Amendment No. 39 to Committee Substitute No. 2 to **HB 1**. Agreed.

Representative Moberly moved the adoption of Floor Amendment No. 41 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 51**--Ackerson, Adams, Allen, Altman, A. Arnold, Ballard, Baugh, Bondurant, Bowling, Brandstetter, Bruce, Dw. Butler, Callahan, Cave, Coleman, Colter, Crall, Curd, Damron, DeWeese, Fletcher, Ford, Geveden, Gooch, Hampton, Hogancamp, House, Lee, Long, Lovell, Maggard, Marcotte, Moberly, Mullinix, Murgatroyd, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Scott, Stine, Thomas, Todd, Treesh, Turner, Walton, Zimmerman.

Nays 43--Adkins, J. Arnold, Barrows, Brown, Buis, Burch, De. Butler, L. Clark, P. Clark, J. Clarke, Crenshaw, Cyrus, Deskins, Fox, Friend, Gee, G. Graham, Gray, Hatcher, Heleringer, Horlander, Jenkins, Jensen, Jordan, Kerr, Lile, Lindsay, Maricle, Marzian, Mason, Mello, Nelson, Nesler, Newsome, Reinhardt, Riner, Siler, Simpson, Stacy, Stumbo, Vincent, Wayne.

Floor Amendment No. 41 to Committee Substitute No. 2 to **HB 1** was adopted.

Representative Moberly moved that **HB 1**, by way of Committee Substitute as amended, be passed.

Representative Mason moved the adoption of Floor Amendment No. 6 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 35**--Adkins, J. Arnold, Ballard, Barrows, Bowling, Buis, Dw. Butler, P. Clark, Crenshaw, Cyrus, Fox, Friend, Geveden, G. Graham, Gray, Heleringer, Horlander, Jenkins, Kerr, Lile, Lindsay, Mason, Napier, Nelson, Nesler, Newsome, Riner, Siler, Simpson, Stacy, Stine, Stumbo, Vincent, Wayne, Zimmerman. **Nays 56**--Ackerson, Adams, Allen, Altman, A. Arnold, Baugh, Bondurant, Brandstetter, Brown, Bruce, Burch, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Curd, Damron, DeWeese, Fletcher, Ford, Gee, Gooch, D. Graham, Hatcher, Hogancamp, House, Jordan, Lee, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mello, Moberly, Mullinix, Murgatroyd, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Scott, Thomas, Treesh, Todd, Turner, Walton.

Floor Amendment No. 6 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Jensen moved the adoption of Floor Amendment No. 11 to Committee Substitute No. 2 to **HB 1**. Rejected.

Speaker Pro Tempore L. Clark assumed the Chair.

Representative Moberly moved that **HB 1**, by way of Committee Substitute as amended, be passed.

The Speaker resumed the Chair.

Representative Nelson moved the adoption of Floor Amendment No. 29 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 21**--J. Arnold, Ballard, P. Clark, Crenshaw, Cyrus, Deskins, Fox, Friend, Gooch, Gray, Horlander, Jenkins, Maricle, Mason, Nelson, Nesler, Newsome, Riner, Siler, Stacy, Stumbo. **Nays 69**--Ackerson, Adams, Adkins, Allen, Altman, A. Arnold, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, Burch, Dw. Butler, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Crall, Curd, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, D. Graham, G. Graham, Hampton, Hatcher, Heleringer, Hogancamp, House, Jensen, Jordan, Kerr, Lee, Lindsay, Long, Lovell, Maggard, Marcotte, Marzian, Mello, Moberly, Mullinix, Murgatroyd, Napier, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Scott, Simpson, Stine, Thomas, Todd, Treesh, Turner, Vincent, Walton, Zimmerman.

Floor Amendment No. 29 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Mason moved the adoption Floor Amendment No. 7 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 24**--Ackerson, Adkins, J. Arnold, Brown, Burch, Dw. Butler, Colter, Crenshaw, Cyrus, Deskins, Fox, Friend, Gooch, Gray, Horlander, Jenkins, Mason, Nelson, Nesler, Newsome, Siler, Stacy, Stumbo, Vincent. **Nays 66**--Adams, Altman, A. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Bruce, De. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Crall, Curd, Damron, Fletcher, Ford, Geveden, D. Graham, G. Graham, Hampton, Hatcher, Heleringer, Hogancamp, House, Jensen, Jordan, Kerr, Lee, Lile, Lindsay, Long, Lovell, Maggard, Marcotte, Marzian, Mello, Moberly, Mullinix, Murgatroyd, Napier, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Simpson, Stine, Thomas, Todd, Treesh, Turner, Walton, Wayne, Zimmerman.

Floor Amendment No. 7 to the Committee Substitute No. 2 to **HB 1** was rejected.

Representative Nesler moved the adoption of Floor Amendment No. 31 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 41**--Adkins, J. Arnold, Ballard, Barrows, Baugh, Brown, Buis, De. Butler, Dw. Butler, L. Clark, P. Clark, Crall, Crenshaw, Cyrus, Damron, Deskins, Fox, Friend, Gee, D. Graham, Gray, Horlander, House, Jenkins, Jordan, Mason, Mello, Mullinix, Nelson, Nesler, Newsome, Reinhardt, Riner, Siler, Simpson, Stacy, Stumbo, Thomas, Vincent, Wayne, Zimmerman. **Nays 50**--Adams, Altman, A. Arnold, Bondurant, Bowling, Brandstetter, Bruce, Burch, Callahan, Cave, J. Clarke, Coleman, Collins, Colter, Curd, DeWeese, Fletcher, Ford, Geveden, Gooch, G. Graham, Hatcher, Hampton, Hogancamp, Jensen, Kerr, Lee, Lile, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Moberly, Murgatroyd, Napier, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Scott, Stine, Todd, Treesh, Turner, Walton.

Floor Amendment No. 31 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Jensen moved the adoption of Floor Amendment No. 13 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 30**--Allen, J. Arnold, Brandstetter, Buis, Cave, P. Clark, J. Clarke, Crenshaw, Cyrus, Deskins, Fletcher, Ford, Friend, Heleringer, Horlander, Jenkins, Jensen, Kerr, Lile, Maricle, Mullinix, Napier, Noland, Stacy, Stine, Stumbo, Todd, Vincent, Walton, Zimmerman. **Nays 61**--Ackerson, Adams, Altman, A. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Bruce, Burch, De. Butler, Dw. Butler, Callahan, L. Clark, Coleman, Collins, Crall, Curd, Damron, DeWeese, Fox, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Hogancamp, House, Jordan, Lee, Lindsay, Long, Lovell, Maggard, Marcotte, Marzian, Mason, Mello, Moberly, Murgatroyd, Nesler, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Scott, Siler, Simpson, Thomas, Treesh, Turner, Wayne.

Floor Amendment No. 13 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative L. Clark moved the adoption of Floor Amendment No. 14 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 94**--Ackerson, Adams, Adkins, Allen, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, Buis, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Fletcher, Ford, Fox, Friend, Gee, Geveden, Gooch, G. Graham, Gray, Hampton, Hatcher, Heleringer, Hogancamp, Horlander, House, Jenkins, Jensen, Jordan, Kerr, Lee, Lile, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Zimmerman. **Nays 0**--

Floor Amendment No. 14 to Committee Substitute No. 2 to **HB 1** was adopted.

Representative Vincent moved the adoption of Floor Amendment No. 9 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 42**--Adkins, Allen, Baugh, Brandstetter, Burch, De. Butler, Dw. Butler, L. Clark, P. Clark, Colter, Crenshaw, Cyrus, Deskins, Fletcher, Ford, Friend, Gray, Heleringer, Horlander, Jenkins, Jensen, Jordan, Lile, Lindsay, Marcotte, Maricle, Marzian, Mason, Mullinix, Napier, Nesler, Newsome, Noland, Riner, Siler, Stacy, Stumbo, Todd, Turner, Vincent, Walton, Wayne. **Nays 43**--Ackerson, Adams, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Bondurant, Bowling, Brown, Bruce, Callahan, Cave, J. Clarke, Coleman, Collins, Crall, Curd, Damron, DeWeese, Geveden, Gooch, D. Graham, Hatcher, House, Lee, Long, Lovell, Maggard, Mello, Moberly, Murgatroyd, Nelson, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Scott, Simpson, Treesh, Zimmerman.

Floor Amendment No. 9 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Nesler moved the adoption of Floor Amendment No. 33 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 21**--Adkins, Allen, J. Arnold, Barrows, Brown, Buis, Dw. Butler, P. Clark, Fox, Friend, Hogancamp, Mason, Mullinix, Napier, Nelson, Nesler, Newsome, Noland, Stacy, Stumbo, Vincent. **Nays 67**--Ackerson, Adams, Altman, A. Arnold, Ballard, Baugh, Bondurant, Bowling, Brandstetter, Burch, De. Butler, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Geveden, Gooch, D. Graham, G. Graham, Gray, Hatcher, Heleringer, Horlander, House, Jenkins, Jensen, Jordan, Kerr, Lile, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mello, Moberly, Murgatroyd, Northup, Nunn, Palumbo, Rapier, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Stine, Thomas, Todd, Treesh, Walton, Wayne, Zimmerman.

Floor Amendment No. 33 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Nesler moved the adoption of Floor Amendment No. 34 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 90**--Ackerson, Adams, Adkins, Allen, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, Buis, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Colter, Curd, Cyrus, Damron, Deskins, DeWeese, Fletcher, Ford, Fox, Friend, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Heleringer, Hogancamp, Horlander, House, Jenkins, Jordan, Kerr, Lee, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Nunn, Palumbo, Rapier, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Zimmerman. **Nays 0**--

Floor Amendment No. 34 to Committee Substitute No. 2 to **HB 1** was adopted.

Representative Gray moved the adoption of Floor Amendment No. 35 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 87**--Ackerson, Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Brown, Bruce, Buis, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Collins, Crall, Crenshaw, Curd, Cyrus, Damron, Deskins, DeWeese, Fletcher, Ford, Fox, Friend, Gee, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Heleringer, Hogancamp, Horlander, House, Jenkins, Jordan, Kerr, Lee, Lile, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Zimmerman. **Nays 3**--Bowling, Colter, Stine.

Floor Amendment No. 35 to Committee Substitute No. 2 to **HB 1** was adopted.

Representative Jenkins moved the adoption of Floor Amendment No. 28 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 28**--Adkins, J. Arnold, Brown, Bruce, Burch, De. Butler, L. Clark, P. Clark, Crenshaw, Cyrus, Deskins, Fox, Friend, Gray, Hatcher, Horlander, Jenkins, Lile, Maricle, Marzian, Mason, Nelson, Nesler, Riner, Stacy, Stumbo, Vincent, Wayne. **Nays 60**--Ackerson, Allen, Altman, A. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Buis, Dw. Butler, Callahan, Cave, J. Clarke, Coleman, Collins, Colter, Crall, Curd, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hampton, Heleringer, Hogancamp, House, Jordan, Kerr, Lee, Long, Lovell, Maggard, Marcotte, Mello, Moberly, Murgatroyd, Napier, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Scott, Siler, Simpson, Stine, Thomas, Todd, Treesh, Turner, Walton.

Floor Amendment No. 28 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Stumbo moved the adoption of Floor Amendment No. 23 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 40**--Ackerson, A. Arnold, J. Arnold, Ballard, Barrows, Bowling, Bruce, Buis, Burch, De. Butler, L. Clark, Colter, Crenshaw, Cyrus, Deskins, DeWeese, Fox, Friend, Geveden, Gray, Heleringer, Jensen, Kerr, Lile, Lindsay, Lovell, Maricle, Mason, Mullinix, Murgatroyd, Nelson, Nesler, Newsome, Rasche, Reinhardt, Simpson, Stine, Stumbo, Vincent, Wayne. **Nays 53**--Adams, Adkins, Altman, Baugh, Bondurant, Brandstetter, Dw. Butler, Callahan, Cave, P. Clark, J. Clarke, Coleman, Collins, Crall, Curd, Damron, Fletcher, Ford, Gee, Gooch, D. Graham, G. Graham, Hampton, Hatcher, Hogancamp, Horlander, House, Jenkins, Jordan, Lee, Long, Maggard, Marzian, Mello, Moberly, Napier, Noland, Northup, Nunn, Palumbo, Rapier, Richards, Riggs, Riner, Scott, Siler, Stacy, Thomas, Todd, Treesh, Turner, Walton, Zimmerman.

Floor Amendment No. 23 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Stumbo moved the adoption of Floor Amendment No. 21 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 35**--Adkins, Allen, J. Arnold, Ballard, Bowling, Bruce, Buis, Dw. Butler, P. Clark, Colter, Crenshaw, Cyrus, Deskins, Fox, Friend, Gray, Horlander, Jenkins, Jensen, Jordan, Kerr, Lile, Maricle, Mason, Mullinix, Nelson, Nesler, Newsome, Reinhardt, Riner, Siler, Simpson, Stacy, Stumbo, Vincent. **Nays 52**--Ackerson, Adams, Altman, A. Arnold, Baugh, Bondurant, Burch, De. Butler, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Crall, Curd, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Heleringer, House, Lovell, Maggard, Marcotte, Marzian, Mello, Moberly, Murgatroyd, Napier, Noland, Northup, Nunn, Palumbo, Rapier, Rasche, Richards, Riggs, Scott, Stine, Thomas, Todd, Treesh, Turner, Walton, Zimmerman.

Floor Amendment No. 21 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Stumbo moved the adoption of Floor Amendment No. 19 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 35**--Ackerson, Adkins, Allen, J. Arnold, Ballard, Bowling, Brown, Buis, De. Butler, Dw. Butler, P. Clark, Colter, Crenshaw, Cyrus, Deskins, Fox, Friend, Gooch, Gray, Horlander, Jenkins, Jensen, Kerr, Lile, Lindsay, Maricle, Mason, Mullinix, Nelson, Nesler, Newsome, Riner, Siler, Stumbo, Vincent. **Nays 57**--Adams, Altman, A. Arnold, Barrows, Baugh, Bondurant, Brandstetter, Burch, Callahan, Cave, L. Clark, J. Clarke, Coleman, Collins, Crall, Curd, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, D. Graham, G. Graham, Hampton, Hatcher, Hogancamp, House, Jordan, Lee, Long, Lovell, Maggard, Marcotte, Marzian, Mello, Moberly, Murgatroyd, Napier, Northup, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Scott, Simpson, Stacy, Stine, Thomas, Todd, Treesh, Turner, Walton, Zimmerman.

Floor Amendment No. 19 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Moberly moved that **HB 1**, by way of Committee Substitute No. 2 as amended, be passed.

Representative Gray moved the adoption of Floor Amendment No. 36 to Committee Substitute No. 2 to **HB 1**.

On the roll call the vote was **Yeas 14**--J. Arnold, Crenshaw, Cyrus, Deskins, Fox, Friend, Gray, Horlander, Jenkins, Kerr, Mason, Mullinix, Nelson, Stumbo. **Nays 66**--Adams, Adkins, Altman, A. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Buis, Burch, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Hatcher, Hogancamp, House, Jordan, Lee, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mello, Moberly, Murgatroyd, Napier, Noland, Northup, Nunn, Rapier, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Thomas, Todd, Treesh, Turner, Vincent, Walton, Zimmerman.

Floor Amendment No. 36 to Committee Substitute No. 2 to **HB 1** was rejected.

Representative Gray moved the adoption of Floor Amendment No. 27 to Committee Substitute No. 2 to **HB 1**. Rejected.

Representative Cyrus moved the adoption of Floor Amendment No. 37 to Committee Substitute No. 2 to **HB 1**.

Representative Cyrus moved that the motion to adopt Floor Amendment No. 37 to Committee Substitute No. 2 to **HB 1** be withdrawn. Agreed.

Representative Moberly moved that **HB 1**, by way of Committee Substitute No. 2 as amended, be passed.

On the roll call the vote was: Yeas 80, Nays 17. (See December 6, 1996 roll call on **HB 1** - Appendix)

HB 1, by way of Committee Substitute No. 2 as amended was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 1**, by way of Committee Substitute No. 2 as amended, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Kerr moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed.

Representative Kerr moved the adoption of the following **Legislative Citation No. 4**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and commends Katie Stine on the occasion of her fortieth birthday. The members of this honorable body are pleased to extend to our esteemed colleague the following tribute: She's a conscientious legislator who reads bills line by line; a spunky gal who, no matter what, always does just fine; a bright and able thinker, she, but clearly no Einstein; a gourmet cook who grows her herbs, she certainly loves to dine; a person who improves with age like a rare, expensive wine; a person we can proudly call a friend of yours and mine; a gal who has forever seen the last of thirty-nine; a mother, lawyer, and more unsaid--she's Representative Katie Stine. **Legislative**

Citation No. 4 was adopted without objection.

Representative Northup moved that the Rules be suspended to introduce and act upon a Resolution. Agreed.

HR 5, by Representative Northup: A RESOLUTION in loving memory and honor of John T. Underwood III.

Representative Northup moved the adoption of the following **HR 5**:

HR 5, A RESOLUTION in loving memory and honor of John T. Underwood III.

With deepest respect and admiration, we pay homage and tribute to our friend and colleague, John T. Underwood III.

WHEREAS, John T. Underwood III was born on October 24, 1935, a native of Junction City, Kentucky, and traversed these earthly bounds on December 2, 1996; and

WHEREAS, John T. Underwood III was the loving son of Amelia Hoagland Underwood, who preceded him in death, and J. T. Underwood; and

WHEREAS, John T. Underwood III was the devoted husband of Marilyn Campbell Underwood; and adored father of two children, John T. Underwood IV and Barbara Underwood Powell; and two stepchildren, Marilyn Campbell, and Thomas E. Campbell, Jr.; and proud grandfather of four grandchildren; and

WHEREAS, John T. Underwood III was a graduate of Elkhorn High School in Frankfort, Kentucky, and attended the University of Kentucky; and

WHEREAS, John T. Underwood III served his country with distinction as a member of the Kentucky National Guard, retiring after 27 years with the rank of Colonel; and

WHEREAS, John T. Underwood III will be remembered as an active and involved citizen, and a highly esteemed member of the Franklin County community where he was well known for his civic leadership; and he was admired by the Kentucky General Assembly for his invaluable assistance in working as a legislative agent for many years; and

WHEREAS, all who knew and admired John T. Underwood III will grieve over their loss, and he is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives does hereby express its utter sense of bereavement and loss upon the passing of John T. Underwood III and extends to his family and many friends its most profound and deepest sympathy.

Section 2. The passion, dedication, intelligence, and social consciousness John T. Underwood III brought to this Commonwealth will never be forgotten, and his influence will continue.

Section 3. When the House of Representatives adjourns this day, it does so in loving memory and honor of John T. Underwood III.

Section 4. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Mrs. Marilyn Campbell Underwood, 2113 Crystal Creek Drive, Frankfort, Kentucky 40601.

There being no objection **HR 5** was adopted.

Representative Simpson moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Simpson moved the adoption of the following **Legislative Citation No. 3**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Rose Hook Vice President of Nursing upon her retirement from twenty-five remarkable years of service to the St. Elizabeth Medical Center and forty-four years of service to the community in the profession of nursing. For inasmuch as this honoree embodies the strength and spirit of St. Elizabeth Medical Center, said recipient is held in extraordinary esteem by colleagues, friends, and members of the communities of Covington, Edgewood, and Grant County. This distinguished body recognizes the exceptional accomplishments made by this woman who has been at the forefront of change, progress and breakthroughs in health care. Her commitment to the highest of standards have been evident in virtually every program and service within the Nursing Division of St. Elizabeth's. The entire membership joins with Representative Arnold Simpson extending its very best wishes to Rose Hook on this memorable occasion and expresses the hope for continued good fortune.

Legislative Citation No. 3 was adopted without objection.

The following members filed requests to have their names added as co-sponsors of Legislative Citation No. 2 under the previous rules suspended: **Legislative Citation No. 2,** Representatives Long, Richards.

Representative Riggs moved that the rules be suspended to withdraw Floor Amendment No. 2 to **HB 1**. Agreed.

Representative Wayne moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Wayne moved that he be recorded as voting "yea" on Floor Amendment No. 19 to Committee Substitute No. 2 to **HB 1**. Agreed.

Representative Collins moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Collins moved that he be recorded as voting "nay" on Floor Amendment No. 41 to Committee Substitute No. 2 to **HB 1**. Agreed.

Representative D. Graham moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative D. Graham moved that he be recorded as voting "yea" on Floor Amendment No. 14 to Committee Substitute No. 2 to **HB 1**. Agreed.

Announcements

The following meeting was announced:

Minority Caucus, upon adjournment.

Adjournment

Representative Stumbo moved that the House adjourn until 4:00 p.m., December 9, 1996.

On the roll call the vote was **Yeas 71**--Ackerson, Adams, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, Fletcher, Ford, Fox, Friend, Gee, Geveden, D. Graham, G. Graham, Hampton, Hatcher, Horlander, House, Jenkins, Jordan, Kerr, Lee, Lindsay, Lovell, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Murgatroyd, Newsome, Noland, Northup, Nunn, Palumbo, Rasche, Richards, Riner, Scott, Siler, Simpson, Stacy, Stine, Thomas, Todd, Treesh, Turner, Vincent, Walton, Worthington, Zimmerman. **Nays 1**--Lile.

The motion to adjourn was adopted.

MONDAY, DECEMBER 9, 1996

SIXTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend K. L. Moore, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Buis, Deskins, Fletcher, Fox, Friend, Geveden, Hampton, Heleringer, Jensen, Rasche, Riggs, and Worthington.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 6, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed. Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the Rules be suspended to introduce special guests. Agreed.

Representative Siler moved that the Rules be suspended to grant floor privileges and to introduce special guests, the McCreary County Central High School Madrigal Singers. Agreed.

Representative Ford moved that the rules be suspended to grant floor privileges and to act upon a Legislative Citation. Agreed.

Representative Ford moved the adoption of the following **Legislative Citation No. 5**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby expresses its deepest gratitude to The McCreary County Central High School Madrigal Singers for their uplifting holiday performance on this day in the Capitol Rotunda. This highly regarded group of talented Kentucky youth, under the fine direction of Christopher Hubbs, has performed nationally and brought high acclaim and honor to their families, school and communities, as well as to this great Commonwealth. This honorable body of the House of Representatives is pleased to join with Representative Danny Ford and Representative Charles Siler, applauding this accomplished group of young Kentuckians and extending our best wishes for their continued success and good fortune. **Legislative Citation No. 5** was adopted without objection.

Orders of the Day

HB 2 taken from the Orders of the Day and ordered read at length for the third time. Representative Stumbo moved that it be read by title only and placed upon its passage. Agreed by a majority of members elected.

Representative Stumbo moved that **HB 2** be passed.

On the roll call the vote was: Yeas 80 , Nays 1 (See December 9 , 1996 roll call on **HB 2** - Appendix)

HB 2 was passed and the title agreed to.

Representative Stumbo moved that the vote by which **HB 2** was passed be reconsidered and said motion be placed on the table. Agreed.

Representative Stumbo moved that the Rules be suspended to grant floor privileges and to introduce special guests. Agreed.

Representative Nelson moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Nelson moved the adoption of the following **Legislative Citation No. 6**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby commends Christopher McGee for his generous and caring spirit. For as the Bible instructs us that a child will lead, so can it be said regarding the goodness and integrity of Christopher McGee that he is indeed a young person of long range maturity who in his compassion offered up all that he had to help those in need. So this day the Kentucky House of Representatives joins with State Representative Preacher Nelson in honoring the sterling character of this saintly child and prays that God may thrice over reward this exceptional young man with plenty. **Legislative Citation No. 6** was adopted without objection.

Roll call to show co-sponsors of **Legislative Citation No. 6** is as follows: Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, Burch, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, DeWeese, Ford, Gee, Gooch, D. Graham, G. Graham, Gray, Hatcher, Hogancamp, Horlander, House, Jenkins, Jordan, Kerr, Lee, Lile, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Nunn, Palumbo, Rapier, Reinhardt, Richards, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Zimmerman.

Motions, Petitions and Communications

Representative Morris moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Morris moved that he be recorded as voting "yea" on **HB 1**. Agreed.

Announcements

The following meeting was announced:

Personal Service Contracts, 11:00 a.m., December 10, 1996.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., December 10, 1996.

On the roll call the vote was **Yeas 76**--Adams, Adkins, Allen, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, DeWeese, Ford, Gee, Gooch, D. Graham, G. Graham, Gray, Hatcher, Hogancamp, Horlander, House, Jenkins, Jordan, Kerr, Lee, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Noland, Northup, Nunn, Palumbo, Rapier, Reinhardt, Richards, Riner, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Wayne, Zimmerman. **Nays 2**--Lile, Todd.

The motion to adjourn was adopted.

TUESDAY, DECEMBER 10, 1996

SEVENTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Steve Pattison, Capitol City Christian Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Burch, Brandstetter, Deskins, DeWeese, Fox, Friend, Hampton, Jensen, Lindsay, Mason, Newsome, Rasche, Reinhardt, Riggs, Todd, and Zimmerman.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 9, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Rapier moved that the Rules be suspended to introduce guests and to grant floor privileges. Agreed.

Motions, Petitions and Communications

Representative Barrows moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Barrows moved the adoption of the following **Legislative Citation No. 7.** Agreed.

To all to Whom These Presents Shall Come, Greetings: Know Ye, That David Little having been given Legislative Recognition for his scholastic achievement, service to the community and leadership skills on Motion of Representative Joe Barrows is hereby deemed by this honorable body worthy of its special acknowledgments and is vested with all the privileges and responsibilities of an Outstanding Young Citizen of the Commonwealth. **Legislative Citation No. 7** was adopted without objection.

Representative A. Arnold moved the adoption of the following **Legislative Citation No. 10**. Agreed.

To all to Whom These Presents Shall Come, Greetings: Know Ye, That Nancy Tipton having been given Legislative Recognition for her leadership skills as Senior Kentucky Youth Assembly Premier President of Senate 1997 on Motion of Representative Adrian Arnold is hereby deemed by this honorable body worthy of its special acknowledgments and is vested with all the privileges and responsibilities of an Outstanding Young Citizen of the Commonwealth. **Legislative Citation No. 10** was adopted without objection.

Representative A. Arnold moved the adoption of the following **Legislative Citation No. 11**. Agreed.

To all to Whom These Presents Shall Come, Greetings: Know Ye, That Jennifer Burdon having been given Legislative Recognition for her leadership skills as East Junior Kentucky Youth Assembly Governor 1995 on Motion of Representative Adrian Arnold is hereby deemed by this honorable body worthy of its special acknowledgments and is vested with all the privileges and responsibilities of an Outstanding Young Citizen of the Commonwealth. **Legislative Citation No. 11** was adopted without objection.

Announcements

The following meetings were announced:

Transportation, 11:00 a.m., Room 129, December 11.

Judiciary, 1:00 p.m., December 11.

Subcommittee on Building Inspection, 10:00 a.m., Room 131, December 11.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., December 11, 1996.

On the roll call the vote was **Yeas 67**--Adams, Adkins, Allen, Altman, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Bruce, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, Coleman, Collins, Colter, Crenshaw, Curd, Cyrus, Damron, Ford, Gee, Geveden, D. Graham, G. Graham, Gray, Hogancamp, House, Jenkins, Jordan, Kerr, Lee, Lovell, Maggard, Marcotte, Marzian, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Nesler, Noland, Northup, Palumbo, Richards, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Treesh, Turner, Vincent, Walton, Worthington. **Nays 4**--Crall, Lile, Maricle, Nunn.

The motion to adjourn was adopted.

WEDNESDAY, DECEMBER 11, 1996

EIGHTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Dr. John Callaway, Extra-Parish, Member of Louisville Presbytery, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The roll was called. All members present except Representatives Ackerson, Altman, Brandstetter, Buis, Burch, Deskins, Fox, Friend, Hampton, Heleringer, Horlander, Jensen, Lindsay, Scott, Todd, Turner, Walton and Zimmerman.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 10, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed. Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the Rules be suspended to grant floor privileges to special guests. Agreed.

Representative Stine moved that the rules be suspended to grant floor privileges and to act upon Legislative Citations. Agreed.

Representative Stine moved the adoption of the following **Legislative Citation No. 13**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds the efforts and offers its sincerest congratulations to the Highlands High School Bluebirds for their achievements as the Class AAA State Football Champions. Whereas they are the masters of football skill in the Class AAA Division of the State Football Competition, this prestigious body commends the accomplishments of this dedicated team and the great honor and distinction they have brought to their school and community. The House of Representatives joins with Representative Katie Stine in honoring them on their many achievements and wishes them every success as they further their academic and athletic careers. **Legislative Citation No. 13** was adopted without objection.

Roll call to show co-sponsors of **Legislative Citation No. 13** is as follows: Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Bruce, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hatcher, Hogancamp, House, Jenkins, Jordan, Kerr, Lee, Lile, Long, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Newsome, Noland, Northup, Nunn, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Treesh, Vincent, Wayne, Worthington.

Representative Stine moved the adoption of the following **Legislative Citation No. 14**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this day in memory of James Dougherty former Assistant Coach of the Highlands High School Football Team. Jim "Red Dog" Dougherty was a man who joyfully served his community through his beloved profession of coaching football; helping the youth of the Northern Kentucky and Cincinnati areas learn the time-honored traditions of fair play, team spirit, and the dedication that leads to victory. On this day of recognition of victory for the Highlands Football Team that he generously served for over a decade, this prestigious body joins Representative Katie Stine in honoring the memory of this outstanding Kentuckian who will long be revered by those he served with such devotion. **Legislative Citation No. 14** was adopted without objection.

Introduction of Resolutions

HR 6, by Representative G. Graham: A RESOLUTION adjourning the House of Representatives in loving memory and honor of John Wesley North, Jr.

HR 7, by Representative Rapier: A RESOLUTION honoring the Nelson County High School Football Team.

Motions, Petitions and Communications

Representative G. Graham moved the adoption of the following **HR 6**:

HR 6, A RESOLUTION adjourning the House of Representatives in loving memory and honor of John Wesley North, Jr.

With deepest respect and admiration, we pay homage and tribute to the memory of John Wesley North, Jr.

WHEREAS, John Wesley North, Jr., a native of Bowling Green, Warren County, Kentucky, was born on December 17, 1916, and traversed these earthly bounds on December 7, 1996; and

WHEREAS, John Wesley North, Jr., was the adored son of John Wesley North, Sr., and Lillian Christian North, who preceded him in death; and

WHEREAS, John Wesley North, Jr., was the devoted husband of Anne Coleman North; and loving father of John W. "Jack" North of Lubbock, Texas; and Anne North Marshall of Orlando, Florida; and proud grandfather of 10 grandchildren; and

WHEREAS, John Wesley North, Jr., was employed by the federal Division of Alcohol, Tobacco and Firearms for thirty-eight years; he worked for two years with the Kentucky Division of Materials; and he was a faithful employee of the House of Representatives from 1976 through the 1990 sessions; and

WHEREAS, John Wesley North, Jr., served his country with pride during World War II as a captain in the United States Army; and he was a member of American Legion Post 7 and VFW Post 4075; and

WHEREAS, all who knew and admired John Wesley North, Jr., will grieve over their loss, and he is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body does hereby express its profound sense of bereavement and loss upon the passing of John Wesley North, Jr., and extends to his family its most heartfelt sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of John Wesley North, Jr.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to Mrs. Anne Coleman North, 130 Thistlewood Avenue, Frankfort, Kentucky 40601.

There being no objection **HR 6** was adopted.

Representative Worthington moved the adoption of the following **Legislative Citation No. 15**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this day in memory of The Honorable Charles Austin Wenz former Democratic Member of the Kentucky House of Representatives, who capably and honorably served the citizens of the Seventieth District of this Commonwealth. His valuable contributions as Sheriff, Judge and Judge Executive of Mason county will long be regarded and valued by all who reaped the benefits of his devotion to the offices of public trust he held. The House of Representatives joins Representative Pete Worthington expressing our sincere condolences and genuine expression of sympathy to his loving family. This prestigious body adjourns this day honoring the memory of this outstanding Kentuckian who will long be revered by those he served with such devotion. **Legislative Citation No. 15** was adopted without objection.

Representative Geveden moved the adoption of the following **Legislative Citation No. 12**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays tribute to Hickman County. Whereas, Hickman was the first county in the coveted Jackson Purchase and was formed on December 21, 1821, this honorable body proudly joins Representative Charles Geveden in honoring this celebrant county and its citizens on this occasion of its 175th Birthday. The House of Representatives further extends its best hopes and wishes for blessings of abundance and well-being for this cherished community. **Legislative Citation No. 12** was adopted without objection.

Announcements

The following meetings were announced:

Labor and Industry, 8:45 a.m., joint meeting, December 12.

Minority Caucus, 1:00 p.m., Room 111, December 12.

Adjournment

Representative Stumbo moved that the House adjourn until 2:00 p.m., December 12, 1996.

On the roll call the vote was **Yeas 73**--Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brown, Bruce, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hatcher, Hogancamp, House, Jenkins, Jordan, Kerr, Lee, Lovell, Maggard, Marcotte, Marzian, Mason, Mello, Moberly, Morris, Murgatroyd, Napier, Nelson, Nesler, Newsome, Noland, Northup, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Treesh, Vincent, Wayne, Worthington. **Nays 4**--Crall, Lile, Maricle, Nunn.

The motion to adjourn was adopted.

THURSDAY, DECEMBER 12, 1996

NINTH LEGISLATIVE DAY

The House was called to order by Speaker Richards.

Prayer by Reverend Mark Hopper, First Baptist Church, Frankfort.

The Speaker led the members in the Pledge of Allegiance to the Flag.

The Clerk read the Governor's Proclamation.

Proclamation by Paul E. Patton, Governor of the Commonwealth of Kentucky: To All To Whom These Presents Shall Come: Pursuant to the power vested in me by Section 80 of the Constitution of the Commonwealth of Kentucky, I, Paul E. Patton, Governor of the Commonwealth of Kentucky, do issue this proclamation, amending my proclamations dated November 26, 1996, and December 5, 1996, all the terms of each being hereby incorporated by reference herein, and I do further hereby add the following matter to said proclamations for consideration by the General Assembly of Kentucky in Extraordinary Session at the Seat of Government, Frankfort, Kentucky:

(1) Adjust current appropriations under the 1996 Kentucky Acts Chapter 380, Part 1, Section 1, Item 72, to provide for additional support to the Department of Insurance for the creation of a Workers' Compensation Branch within the Insurance Fraud Unit.

DONE AT THE CAPITOL, in the City of Frankfort, this the 11th day of December in the year of our Lord One Thousand Nine Hundred and Ninety-six and in the year of the Commonwealth the Two Hundred and Fifth.

Paul E. Patton, Governor

John Y. Brown, III, Secretary of State

The roll was called. All members present except Representatives Altman, Buis, Burch and Fox.

Representative Ballard moved that the absent members be granted leave of absence in accordance with the rules of the House. Agreed.

Representative Ballard moved that the reading of the Journal of December 11, 1996, be dispensed with and the same approved. Agreed.

Representative Ballard moved that the Rules be suspended for the purpose of making a motion concerning co-sponsors. Agreed.

Representative Ballard moved that all properly filed co-sponsor requests be approved. Agreed.

Representative Stumbo moved that the Rules be suspended to introduce special guests. Agreed.

Representative Rapier moved that the rules be suspended to introduce and grant floor privileges to the Nelson County Football Team and to act upon a Legislative Citation. Agreed.

Representative Rapier moved the adoption of the following **Legislative Citation No. 17**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds the efforts and offers its sincerest congratulations to the Nelson County High School Cardinals for their achievements as the Class AAAA State Football Champions Whereas they are the masters of football skill in the class AAAA Division of State Football Competition, this prestigious body commends the accomplishments of this highly talented and dedicated team and recognizes them for the great honor and distinction they have brought to Nelson County High School and the community. The House of Representatives joins with Representative Kenny Rapier in honoring them on their many achievements and wishes them every success as they further their academic and athletic careers. **Legislative Citation No. 17** was adopted without objection.

Senate Message

Announcing passage of **SCR 13** and **HB 2**. (Time: 2:20 p.m.)

Representative Stumbo moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 27**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Kelsey Friend, Jr. and expresses deep appreciation to the gentleman from Pikeville who dedicated his efforts toward helping the families and children of this great Commonwealth. His devotion to and practice of Christian values is worthy of our deepest respect and his significant contributions to the legislative process will be sorely missed; therefore, this prestigious body salutes the integrity of this esteemed colleague who ably represented the interests of his constituents in the 93rd District and prays for a fulfilling and blessed future. **Legislative Citation No. 27** was adopted without objection.

Representative Bowling moved the adoption of the following **Legislative Citation No. 28**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Rick Fox for his exemplary service to the legislative process. His outgoing personality will be sorely missed by the members of this honorable body. For inasmuch as the astute gentleman from Harlan served as a valued contributor on the Appropriations and Revenue Committee and ably represented his constituents in the 88th District, the House of Representatives expresses gratitude for his great efforts and extends best wishes for a bright and prosperous future. **Legislative Citation No. 28** was adopted without objection.

Representative Stumbo moved the adoption of the following **Legislative Citation No. 29**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Jim Maggard for extraordinary dedication to the legislative process and the good will and friendship said recipient has so generously given to his colleagues in the House of Representatives. Let it be known to all who come forth that the gentleman from Breathitt is honored and esteemed among his peers for his quick wit and his remarkable savvy in using the political process to significantly improve those wonderful counties of Breathitt, Jackson, Laurel and Owsley. This Honorable body does salute the outstanding legislative career of the gentleman from Breathitt and extends best wishes for a blissful and successful retirement. **Legislative Citation No. 29** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 22**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Thomas W. Todd for unblemished service to the citizens of this Commonwealth and remarkable dedication to the legislative process. For inasmuch as the gentleman from Nancy diligently and with honor represented the needs of his constituents in the 83rd District, this prestigious body does salute our valued colleague whose long-term membership on the Capital Projects and Bond Oversight Committee contributed greatly to efforts on behalf of the citizens of the Commonwealth. This honorable colleague worked with a keen sense of devotion on issues impacting rural Kentucky, and the Members of the House of Representatives are honored to join Representative Danny Ford in extending our prayers for a joyful and abundant future. **Legislative Citation No. 22** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 23**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Ray Mullinix for remarkable dedication to the legislative process and the good will and friendship he has so generously given to his colleagues in the House of Representatives. The gentleman from Burkesville has diligently and with honor represented the needs of his constituents in the 53rd District and shared with fellow legislators his great knowledge of laws in the broadcast industry as they related to election issues. This prestigious body does salute our esteemed colleague whose fine sense of humor and generous spirit will be sorely missed. The Members of the House of Representatives are honored to join Representative Danny Ford in extending our best wishes for a successful and productive future. **Legislative Citation No. 23** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 24**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Jeffrey Buis for his dedicated service to the legislative process and the good will and friendship said recipient has generously given to his colleagues in the House of Representatives. For inasmuch as the gentleman from Liberty is honored and esteemed for his diligent work on behalf of issues to improve the quality of life in rural Kentucky, this prestigious body does express its appreciation, salutes his valued contributions, and joins with Representative Ford in extending its very best wishes for a successful and productive future. **Legislative Citation No. 24** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 25**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Clarence D. Noland, Jr. for his extraordinary dedicated service to the legislative process. Clarence Noland's wit, humor and fine story telling will be sorely missed by the members of this honorable body. For inasmuch as the gentleman from Irvine is a long-time member of the Transportation Committee and served as an expert for the legislature on issues relating to transportation, the Members of the House of Representatives express their appreciation, salute his valued contributions, and join with Representative Danny Ford in extending best wishes for a joyful and prosperous future. **Legislative Citation No. 25** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 26**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Elbert Hampton for his dedication to the citizens of this Commonwealth. For inasmuch as the gentleman from Aretmus, diligently and with honor served the needs of his constituents in the 86th District, this prestigious body does salute our valued colleague whose actions spoke louder than words and joins with Representative Ford in extending best wishes for a happy and rewarding future. **Legislative Citation No. 26** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 32**. Agreed.

It is the intent of the House of Representatives of the Commonwealth of Kentucky to hereby adjourn this legislative day in loving memory of Leon Altman beloved father of Representative Ray Altman. The House of Representatives joins Representative Danny Ford in expressing its deepest sympathy to The Altman Family and to all who share in the great loss on the passing of this fine Kentuckian who so dearly loved the natural wonders of this great Commonwealth. Leon Altman lived a full and wonderful life that will serve as an inspiration for others and will be most sadly missed for many years to come. **Legislative Citation No. 32** was adopted without objection.

Representative Hogancamp moved the adoption of the following **Legislative Citation No. 30**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this day in memory and honor of Blanche Brown beloved aunt of former Kentucky Governor John Y. Brown. The members of this honorable body join with Representative Kathy Hogancamp in recognizing the loss of this outstanding Kentucky matriarch, whose generosity of spirit contributed mightily to those she so wisely and devotedly served. Her contributions to the health and well-being of Kentucky's children serves as testimony to her compassion and genuine love for others. This was a vital and active woman whose keen interest in politics was a source of joy. She lived for one hundred years a life worthy of high regard and will be sadly missed for many years to come. **Legislative Citation No. 30** was adopted without objection.

Introductions of Resolutions

HR 8, by Representatives Callahan and A. Simpson: A RESOLUTION adjourning the House of Representatives in honor of Bill Butler, National Entrepreneur of the Year.

HR 9, by Representative Adams: A RESOLUTION adjourning the House of Representatives in loving memory and honor of Lisa Katherine Schureman.

Representative Stumbo moved that the Rules be suspended to allow the introduction of guests. Agreed.

Representative J. Arnold moved the adoption of the following **Legislative Citation No. 34**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this day in memory of Shelby G. McKown and extends our sincerest expressions of sympathy to his loving wife of fifty-eight years, Hilda Presley McKown; his devoted children, Jackie Arnold, Janice Workman, and Stephen McKown; and his beloved brothers, sisters, and grandchildren. This fine gentleman worked for more than thirty years as a coal miner in this great Commonwealth, owned and operated the general store in Pride, Kentucky, and will long be remembered and cherished by those whose fortune it was to know him. The House of Representatives joins Representative John Arnold this day in memory of this outstanding Kentucky citizen.

Legislative Citation No. 34 was adopted without objection.

Representative Adams moved the adoption of the following **HR 9**:

HR 9, A RESOLUTION adjourning the House of Representatives in loving memory and honor of Lisa Katherine Schureman.

With deepest respect and admiration, we pay homage and tribute to Lisa Katherine Schureman.

WHEREAS, Lisa Katherine Schureman was born on November 2, 1969, a native of Owen County, Kentucky, and traversed these earthly bounds on November 24, 1996; and

WHEREAS, Lisa Katherine Schureman was the adored daughter of Charles and Lucy K. Greene McCoy; the loving sister of Leigh Karil McCoy; and the devoted wife of Steve Schureman; and

WHEREAS, Lisa Katherine Schureman graduated from Georgetown College in Georgetown, Kentucky, where she received her undergraduate and master's degrees; and she became certified in library science at the University of Kentucky; and

WHEREAS, Lisa Katherine Schureman was a librarian and technology coordinator at Owen County Primary School, and as a member of Owenton First Baptist Church, she was the founder of a summer youth program for 70 to 80 children that came from small churches in Owen County that did not have summer activities for children; and

WHEREAS, a life should be measured by deeds, not years, and Lisa Katherine Schureman brought happiness to all the lives she touched, and she is worthy of the highest commendation; and

WHEREAS, the passing of Lisa Katherine Schureman has left a void that will be difficult to fill, and she is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body does hereby express its utter sense of bereavement and loss upon the passing of Lisa Katherine Schureman, and extends to her family its most profound and deepest sympathy.

Section 2. When the House of Representatives adjourns this day, it does so in loving memory and honor of Lisa Katherine Schureman.

Section 3. The Clerk of the House of Representatives is directed to transmit a copy of this Resolution to Mr. Steve Schureman, 334 West Seminary Street, Owenton, Kentucky 40359.

There being no objection **HR 9** was adopted.

Roll call to show co-sponsors of **HR 9** is as follows:--Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, De. Butler, Dw. Butler, Callahan, Cave, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Geveden, Gooch, D. Graham, Gray, Hampton, Hogancamp, Horlander, House, Jenkins, Jensen, Jordan, Kerr, Lee, Lile, Lindsay, Long, Lovell, Maggard, Marcotte, Maricle, Mason, Mello, Moberly, Morris, Murgatroyd, Napier, Nelson, Newsome, Noland, Nunn, Palumbo, Rapier, Rasche, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Representative Barrows moved the adoption of the following **Legislative Citation No. 18**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds the efforts and offers its sincerest congratulations to the Paul Laurence Dunbar Bulldogs for their remarkable achievements in the Class AAAA State Football Tournament. This prestigious body commends the accomplishments of this highly talented and dedicated team and recognizes them for the great honor and distinction they have brought to Paul Laurence Dunbar High School and the community. The House of Representatives joins with Representative Joe Barrows in honoring them on their many achievements and wishes them every success as they further their academic and athletic careers. **Legislative Citation No. 18** was adopted without objection.

Representative Riggs moved the adoption of the following **Legislative Citation No. 33**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and pays tribute to Bob Gaddie Fire Chief on the occasion of his retirement from thirty-seven years of service to the Jeffersontown Fire Department. Inasmuch as this outstanding citizen has served honorably and worked diligently on behalf of firefighters and citizens, the entire membership of the House of Representatives joins Representative Steve Riggs in expressing gratitude to Chief Gaddie for commendable service to the citizens of this Commonwealth and expresses the hope on this occasion for continued good fortune. **Legislative Citation No. 33** was adopted without objection.

Representative Callahan moved that the Rules be suspended to act upon a Resolution. Agreed.

Representative Callahan moved the adoption of the following **HR 8**:

HR 8, A RESOLUTION adjourning the House of Representatives in honor of Bill Butler, National Entrepreneur of the Year.

WHEREAS, Bill Butler, a native of Covington, Kentucky, and founder and president of Corporex Companies, Inc., in Northern Kentucky, was the recipient of the National Entrepreneur of the Year Award that was presented to him on November 16, 1996, by the International Conference of the Entrepreneurs of the Year Institute in Palm Springs, California; and

WHEREAS, Bill Butler competed with entrepreneurs from 45 other cities, and was selected by a committee representing the academic, media, and business fields; and

WHEREAS, Bill Butler has demonstrated extraordinary vision as president of Corporex Companies, Inc., and has steered his company down a true path of financial stability and economic growth in making it into a multimillion-dollar operation with numerous divisions dealing in real estate development, construction, hotels, restaurants, and sports country clubs; and generating annual earnings of $165 million while employing 750 people; and

WHEREAS, to mention only a few of his accomplishments, he was instrumental in the development of River City and the adjacent Embassy Suites Hotel on Covington's waterfront; the rehabilitation of the old Baldwin Piano & Organ Company in Walnut Hills into the Baldwin Center; and the Circleport business parks in Boone County; and

WHEREAS, Bill Butler is the devoted husband of Sue Butler and the loving father of two children, Christa and Kevin Butler;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The House of Representatives congratulates Bill Butler upon the occasion of being named National Entrepreneur of the Year, and wishes to him success in all future endeavors.

Section 2. This honorable body hails and commends Bill Butler for his successful enterprises and for his immeasurable contributions to the Northern Kentucky community and the Commonwealth of Kentucky.

Section 3. When the House of Representatives adjourns this day, it does so in honor of Bill Butler, National Entrepreneur of the Year.

Section 4. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Honorable Bill Butler, Corporex Companies, Inc., 50 E. River Center Boulevard, Suite 1200, Covington, Kentucky 41011.

There being no objection **HR 8** was adopted.

Representative Worthington moved the adoption of the following **Legislative Citation No. 31**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby adjourns this day in memory of Reverend Scott Briggs and extends to his devoted wife and loving family our sincere condolences upon the loss of this community-minded gentleman who was, indeed, a friend to all. Reverend Briggs will be long remembered by all whom he graciously served through his good works in Fleming County and throughout this Commonwealth. This honorable body joins with Representative Pete Worthington in paying tribute to this outstanding citizen who will be sadly missed for years to come. **Legislative Citation No. 31** was adopted without objection.

Representative Stacy moved the adoption of the following **Legislative Citation No. 8**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby extends its sincerest condolences and genuine expressions of sympathy for the untimely death of Brittney Nicole Marcum. Members of the House of Representatives do honor said individual and her devastated family, whose loss is irreplaceable. This prestigious body shares in this phenomenal tragedy and offers comfort in the knowledge that Brittney Nicole Marcum is serene beyond the cares and worries of this world. This honorable body doth hereby adjourn this tenth day of December, nineteen hundred and ninety-six in memory of the blithe young child whose loving smile and tremendous potential will forever be recorded in her loved ones' hearts. **Legislative Citation No. 8** was adopted without objection.

Roll call to show co-sponsors of **Legislative Citation No. 8** is as follows:--Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Curd, Cyrus, Damron, DeWeese, Fletcher, Ford, Friend, Gee, Geveden, Gooch, D. Graham, G. Graham, Gray, Hampton, Hatcher, Hogancamp, Horlander, House, Jenkins, Jensen, Jordan, Kerr, Lee, Lile, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Newsome, Noland, Palumbo, Rapier, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Representative Stacy moved the adoption of the following **Legislative Citation No. 9**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby extends its sincerest condolences and genuine expressions of sympathy for the untimely death of Ricky Dale Sapp, Jr. Members of the House of Representatives do honor said individual and his devastated family, whose loss is irreplaceable. This prestigious body shares in this phenomenal tragedy and offers comfort in the knowledge that Ricky Dale Sapp, Jr. is serene beyond the cares and worries of this world. This honorable body doth hereby adjourn this tenth day of December, nineteen hundred and ninety-six in memory of this precious young child whose loving smile and tremendous potential will forever be recorded in his loved ones' hearts. **Legislative Citation No. 9** was adopted without objection.

Roll call to show co-sponsors of **Legislative Citation No. 9** is as follows:--Adams, Adkins, Allen, A. Arnold, J. Arnold, Ballard, Barrows, Baugh, Bondurant, Bowling, Brandstetter, Brown, Bruce, De. Butler, Dw. Butler, Callahan, Cave, L. Clark, P. Clark, J. Clarke, Coleman, Collins, Colter, Crall, Crenshaw, Cyrus, Damron, DeWeese, Fletcher, Ford, Friend, Gee, Geveden, Gooch, D. Graham, G. Graham, Hampton, Hatcher, Hogancamp, Horlander, House, Jenkins, Jensen, Jordan, Lee, Lile, Lindsay, Lovell, Maggard, Marcotte, Maricle, Marzian, Mason, Mello, Moberly, Morris, Mullinix, Murgatroyd, Napier, Nelson, Newsome, Noland, Palumbo, Rapier, Reinhardt, Richards, Riggs, Riner, Scott, Siler, Simpson, Stacy, Stine, Stumbo, Thomas, Todd, Treesh, Turner, Vincent, Walton, Wayne, Worthington, Zimmerman.

Representative Palumbo moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Palumbo moved that she be recorded as voting "nay" on **Floor Amendment No. 36** to **HB 1**. Agreed.

Representative Palumbo moved that the rules be suspended for the purpose of recording a vote. Agreed.

Representative Palumbo moved that she be recorded as voting "yea" on **HB 2**. Agreed.

Representative Maggard moved the adoption of the following **Legislative Citation No. 19**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Breathitt County High School Varsity Football Team for outstanding athletic team execution resulting in highest commendations from peers. Whereas, the 1996-97 Breathitt County High School Varsity Football Team captured highest recognition in the Class "AA" Division of the Kentucky Football State Championships two sensational years in a row. Now let it be known that excellent athletic performance such as has been demonstrated herein is the result of persistence, phenomenal skill and impassioned, winning approach by the Breathitt County High School Varsity Football Team to the game. Therefore, State Representative Jim Maggard of the 89th legislative district who represents this distinguished team of athletes and the remainder of this most prestigious body congratulates this phenomenal winning athletic machine; commending its veritable squad spirit as well as the exceptional coaching team whose skill developed a championship team that brought distinction to school and community. **Legislative Citation No. 19** was adopted without objection.

Representative Maricle moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Maricle moved the adoption of the following **Legislative Citation No. 20**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby pays tribute to Bullitt County in honor of its 200th Birthday. Whereas, Bullitt County was founded in 1796 as the 20th Kentucky county, and was named for Alexander Scott Bullitt, respected statesman, noted Indian fighter, and Kentucky's first Lt. Governor; this honorable body proudly joins Representative Allen Maricle in extending its best hopes and wishes to all who call Bullitt County home. We further extend our prayers that abundance and joy will be reaped as the harvest for the dedicated citizens who plant the seeds of devoted service into the fertile soil of our communities. **Legislative Citation No. 20** was adopted without objection.

Representative Murgatroyd moved the adoption of the following **Legislative Citation No. 16**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby applauds the efforts and offers its sincerest congratulations to the Beechwood High School Tigers for their achievements as the Class A State Football Champions. Whereas they are the masters of football skill in the Class A Division of the State Football Competition, this prestigious body commends the accomplishments of this dedicated team and the great honor and distinction they have brought to their school and community. The House of Representatives joins with Representative Richard Murgatroyd in honoring them on their many achievements and wishes them every success as they further their academic and athletic careers. **Legislative Citation No. 16** was adopted without objection.

Recess

Representative Stumbo moved to suspend the rules for the House to recess until 5:00 p.m. Agreed.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Senate Message

HB 1 returned with the following message: The Senate has passed **HB 1** by way of Senate Committee Substitute and with Senate Floor Amendment No. 35, Senate Floor Amendment No. 28, Senate Floor Amendment No. 29, Senate Floor Amendment No. 24 and Senate Floor Amendment No. 32 and respectfully requests concurrence of this Honorable Body. (Time: 5:08 p.m.)

Orders of the Day

Representative Stumbo moved that **HB 1**, be placed in the Orders of the Day for today. Agreed.

HB 1, with Senate Committee Substitute and Senate Floor Amendment attached thereto, taken from the Orders of the Day. Representative Stumbo moved that it be placed upon its passage. Agreed.

The Senate Committee Substitute to **HB 1** is as follows:

AN ACT relating to workers' compensation, providing for funding therefor, making appropriations therefor, and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Injury" means any work-related ***traumatic event or series of traumatic events, including cumulative trauma***[~~harmful change in the human organism~~], arising out of and in the course of employment ***which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and***[~~, including damage to or loss of a prosthetic appliance, but~~] does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease ***and damage to a prosthetic appliance***, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(2) "Occupational disease" means a disease arising out of and in the course of the employment.

(3) An occupational disease as defined in this ***chapter***[~~section~~] shall be deemed to arise out of the employment if there is

apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.

(4) "Injurious exposure"[~~ as used in KRS 342.316~~] shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.

(5) "Death" means death resulting from an injury or occupational disease.

(6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer.

(7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter.

(8) "Department" means the Department of Workers' Claims in the Labor Cabinet.

(9) "Commissioner" means the commissioner of the Department of Workers' Claims.

(10) "Board" means the Workers' Compensation Board.

(11) ***(a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;***

(b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and

(c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:

1. Total and permanent loss of sight in both eyes;

2. Loss of both feet at or above the ankle;

3. Loss of both hands at or above the wrist;

4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;

5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;

6. Incurable insanity or imbecility; or

7. Total loss of hearing[~~"Disability" means a decrease of wage earning capacity due to injury or loss of ability to compete to obtain the kind of work the employee is customarily able to do, in the area where he lives, taking into consideration his age, occupation, education, effect upon employee's general health of continuing in the kind of work he is customarily able to do, and impairment or disfigurement~~].

(12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

(13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits.

(14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits.

(15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

(16) "Person" means any individual, partnership, firm, association, trust, joint venture, corporation, ***limited liability company,*** or legal representative thereof.

(17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from ***persons other***[~~others~~] than the employer as evidenced by the employee's federal and state tax returns.

(18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.

(19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter.

(20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States.

(21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the ***Kentucky*** Employers Mutual Insurance Authority and every group of self-insurers operating under the provisions of this chapter.

(23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.

(b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including, but not limited to, administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time.

(24) "Premium" for every group of self-insurers means any and all assessments levied on its members by such group or contributed to it by the members thereof. ***For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group.***

(25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Kentucky Department of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. ***For policies covering leased employees as defined in Section 36 of this Act, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in Section 36 of this Act for each leased employee for that portion of the payroll pertaining to the leased employee.***

(b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.

(c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. ***The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage.*** For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

(d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors.

(26) "Insurance policy" for an insurance company or group self-insurer means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year.

(27) "Self-insurance year" for a group self-insurer means the annual period of certification of the group created pursuant to KRS 342.350(4).

(28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:

(a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period.

(b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Department for Employment Services, Cabinet for Workforce Development. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period.

(c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by ***1.25***[~~1.12~~] and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Department for Employment Services data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122.

(d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification.

(e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1).

(f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection.

(g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection~~[, except that the value for each such employer's claims shall be the total of the indemnity benefits paid by the employer, adjusted to current benefit levels, plus the medical benefits paid]~~.

(h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents ($0.30) per one hundred dollars ($100) of the employer's most recent annualized payroll for employees covered by this chapter.

(29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget.

(30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits.

(32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth.

(33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.

(34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy.

(35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition.

(36) "Permanent disability rating" means the permanent impairment rating selected by an arbitrator or administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

Section 2. KRS 342.020 is amended to read as follows:

(1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. ***The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled.*** The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection

(4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.

(3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

(4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

(a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;

(b) The employee shall be allowed choice of provider within the plan;

(c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;

(d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;

(e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

(f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and

(g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.

(h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.

(i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

(5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

(6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.

(7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge ***or arbitrator*** by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge ***or arbitrator*** may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

(8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, ***arbitrator,*** or the administrative law

judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

(9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

Section 3. KRS 342.120 is amended to read as follows:

(1) There is created the Division of the Special Fund in the Department of Workplace Standards which shall be responsible for the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund. The Division of the Special Fund shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration of the legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) ***The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred after the effective date of this Act.***[~~A claimant may name the special fund as a party in the original application for benefits, or either party shall as soon as practicable, by motion, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if either or both of the following appears:~~

~~(a) The employee is disabled, whether from a compensable injury, occupational disease, pre-existing disease, or otherwise, and has received a subsequent compensable injury by accident, or has developed an occupational disease;~~

~~(b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.~~

~~(3) All motions to join the special fund shall include proper allegations demonstrating the basis for joinder and certification of the fact that a copy of the motion and the entire case file has been forwarded to the special fund at the cost of the movant.~~

~~(4) Failure to move for joinder of the special fund within the time limit prescribed by this section, without a showing of good cause, shall bar any recovery against the special fund.~~

~~(5) When the special fund has been made a party, the administrative law judge may direct the procedures provided in KRS 342.121.~~

~~(6) If it is found that the employee is a person mentioned in paragraphs (a) or (b) of subsection (2) of this section and a subsequent compensable injury or occupational disease has resulted in additional permanent disability so that the degree of disability caused by the combined disabilities is greater than that which would have resulted from the subsequent injury or occupational disease alone, and the employee is entitled to receive compensation on the basis of the combined disabilities, the employer shall be liable for the payment of all income benefits until the benefits paid have reached a percentage of the full income benefits awarded by the administrative law judge which is equal to the percentage of disability which would have resulted from the latter injury or occupational disease had there been no pre-existing disability or dormant, but aroused disease or condition.~~

~~(7) The remaining compensation for which such resulting condition would entitle the employee, including any compensation for disability resulting from a dormant disease or condition aroused into disabling reality by the injury or occupational disease, but excluding all compensation which the provisions of this chapter would have afforded on account of prior disabling disease or injury had it been compensated thereunder, shall be paid out of the special fund provided for in KRS 342.122. Such remaining compensation shall be paid directly to the employee under such regulations as the secretary of finance and administration may provide for such purpose.~~

~~(8) In making the computation for the apportionment of benefits under this section, the administrative law judge shall determine the amount of the employee's weekly income benefits and apportion the award commencing with the employer and special fund as follows:~~

~~(a) For benefits awarded under this chapter, the portions shall be based on the number of weeks stated therein;~~]

(3) [~~(b) In instances~~]Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, ***with the period of payment beginning on the date settlement was approved by an administrative law judge or arbitrator***[~~unless otherwise agreed by all parties~~]. ***This provision is remedial and shall apply to all pending and future claims.***

Section 4. KRS 342.122 is amended to read as follows:

[~~(1) (a) For the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Division of Special Fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and, financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth enacted by the General Assembly, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4) and there is hereby imposed on and after January 1, 1990, a special fund assessment at the rate of sixteen and nine-tenths percent (16.9%) against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional special fund assessment at the rate of forty-seven percent (47%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1990, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1990, an additional assessment at the rate of forty-seven percent (47%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(c) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on such premiums.~~

~~(2) Each November 15, the funding commission shall determine the amount of premiums reported and assessments imposed in subsection (1) of this section for the past period as appropriate. If the funding commission determines that the special fund assessment rate imposed to produce seventy million dollars ($70,000,000) or the additional special fund assessment rate imposed to produce forty million dollars ($40,000,000) are likely to produce more or less than seventy million dollars ($70,000,000) or forty million dollars ($40,000,000) during the next annual period, the commission shall, based upon such determination, calculate such adjustments to each rate as shall be necessary to provide seventy million dollars ($70,000,000) and forty million dollars ($40,000,000) respectively, during the next annual period beginning on January 1 of each year. On or before December 1 of each year, the commission shall notify each insurance company writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the adjusted rates which shall become effective on January 1, of each year, unless modified by the General Assembly.~~

~~(3) (a) Notwithstanding the assessment rates in subsection (1) of this section or the special fund assessment amounts specified in subsection (2) of this section, for calendar year 1995, the funding commission shall impose a special fund assessment rate necessary to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(b) For calendar year 1996 the funding commission shall impose a special fund assessment rate necessary to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) and an additional assessment rate necessary to produce forty million dollars ($40,000,000).~~

~~(c) 1. The assessment rate calculated to produce seventy-eight million, six hundred sixty-two thousand sixty-two dollars ($78,662,062) under paragraph (a) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (a) of this subsection, which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1995, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premium, as defined in KRS 342.0011 of every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(d) 1. The assessment rate calculated to produce eighty-eight million, six thousand two hundred forty-one dollars ($88,006,241) under paragraph (b) of this subsection shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.~~

~~2. In addition to the assessment calculated under subparagraph 1. of this paragraph, the funding commission~~

~~shall calculate an assessment rate calculated to produce forty million dollars ($40,000,000), pursuant to paragraph (b) of this subsection which shall be imposed upon the amount of workers' compensation premiums received on and after January 1, 1996, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal, and upon the premiums, as defined in KRS 342.0011 by every employer engaged in the severance or processing of coal who is carrying his own risk.~~

~~(e) On or before December 1 of 1994 and 1995, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insurers, and each employer carrying his own risk of the special fund assessment rates established in this subsection which shall become effective on January 1, 1995, and January 1, 1996, respectively, unless modified by the General Assembly. The payment schedules and other matters relating to the payment of the special fund assessments required pursuant to this section shall apply to the assessment rates and amounts required under this subsection.~~]

(1) ***(a)***[~~(f)~~] For calendar year 1997 and for each calendar year thereafter, ***for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Labor Cabinet, except the Division of Employment Standards and Mediation and the Office of Labor-Management Relations, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk***[~~the assessment rates and amounts contained in the provisions of subsections (1) and (2) of this section shall apply~~].

(b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of September 1 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provisions of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

(c) In addition to the assessment imposed in paragraphs (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Revenue Cabinet shall credit nineteen million dollars ($19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars ($19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars ($4,750,000).

(d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.

(e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.

(2)[~~(4)~~] These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. ***Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service.*** Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(3)[~~(5)~~] The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

(4)[~~(6)~~] A group self-insurance association may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years.

(5)[~~(7)~~] The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each group self-insurer to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or group self-insurer may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or group self-insurer from the obligation to furnish same to the funding commission. The Department for Employment Services, Cabinet for Workforce Development is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.

(6)[~~(8)~~] Each self-insured employer, group self-insurer or insurance carrier shall provide any information and submit any reports the Revenue Cabinet or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

(7)[~~(9)~~] The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.

(8)[~~(10)~~] The fund heretofore designated as the subsequent claim fund is abolished and there is substituted therefor the special fund as set out by this section and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.

[~~(11) Notwithstanding any other provision of this section or this chapter, or the Kentucky Revised Statutes, generally, the assessment rates for the special fund, as determined by this section, which were in force and effect on January 1, 1990, shall continue in force and effect until December 1, 1991, and the total amount of funds collected pursuant to the assessment rates shall not be limited to the provisions of this section.~~]

(9)[~~(12)~~] Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every group of self-insurers operating under the provision of KRS 342.350(4), and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Section 5. KRS 342.1223 is amended to read as follows:

(1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.

(2) The commission shall:

(a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386***, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities***;

(c) Report to the General Assembly at each regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;

(d) Recommend to the General Assembly, not later than October 31 of the year prior to each regular legislative session, changes deemed necessary in the level of the assessments imposed in ***this chapter***[~~KRS 342.122~~];

(e) In conjunction with the Labor Cabinet, submit to the General Assembly, not later than October 31 of the year prior to each regular legislative session, a proposed budget for the biennium beginning July 1 following the regular session of the General Assembly;

(f) In conjunction with the Labor Cabinet, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;

(g) Conduct periodic audits, independently or in cooperation with the Labor Cabinet or the Revenue Cabinet, of all entities subject to the assessments imposed in ***this chapter***[~~KRS 342.122~~]; and

(h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;

(c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;

(d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;

(e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and

(f) To make and promulgate administrative regulations.

(4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management and Economic Analysis rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.

(5) The commission shall be attached to the Labor Cabinet for administrative purposes only.

Section 6. KRS 342.125 is amended to read as follows:

(1) ***Upon motion by any party or upon an arbitrator's or administrative law judge's own motion, an arbitrator or administrative law judge may reopen and review any award or order on any of the following grounds:***

(a) Fraud;

(b) Newly discovered evidence which could not have been discovered with the exercise of due diligence;

(c) Mistake; and

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

(2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(3) Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, or within two (2) years of such award or order, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party.

(4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the arbitrator or administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The arbitrator or administrative law judge shall immediately send all parties a copy of the subsequent order or award. Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except

upon order of the arbitrator or administrative law judge[~~In claims where an award or order is entered pursuant to KRS 342.730(1)(a) or (1)(b) and upon its own motion or upon the application of any party and a showing of change of occupational disability, mistake or fraud, or newly discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. In claims where an award or order is entered pursuant to KRS 342.730(1)(c) or (d) and upon its own motion or upon the application of any party and a showing of change of medical condition, mistake, or fraud, or newly discovered evidence, the administrative law judge may at any time reopen and review any award or order, except as provided in subsection (2) of this section, ending, diminishing, or increasing the compensation previously awarded, within the maximum and minimum provided in this chapter, or the administrative law judge may change or revoke his previous order, sending immediately to the parties a copy of his subsequent order or award. Any final award increasing or diminishing benefits shall require a showing of a change in occupational disability. Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder. The employer shall not suspend the payment of benefits during the pendency of any reopening procedures~~].

(5)[~~(2)~~] (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis ***and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease***, the ***arbitrator or*** administrative law judge may review an award ***or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732***[~~of a retraining incentive benefit because of the diagnosis, and upon a finding of respiratory impairment due to that pneumoconiosis shall make an award for benefits as provided in KRS 342.732. Such a reopening may also occur upon a showing of progression of respiratory impairment in a claim for which benefits were previously awarded under the provisions of KRS 342.732~~]. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings.

(b) Benefits awarded as a result of a review under this subsection shall be reduced[~~ by the amount of retraining incentive benefits previously awarded and, if applicable, also~~] by the amount of ***retraining incentive benefits or*** income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.

(6)[~~(3)~~] In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded. The law in effect on the date of the original injury controls the rights of the parties.

(7)[~~(4)~~] Where an agreement has become an award by approval of the ***arbitrator or*** administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the ***arbitrator or the*** administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.

(8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to the effective date of this Act may be reopened within four (4) years of the award or order or within four (4) years of the effective date of this Act, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

Section 7. KRS 342.213 is amended to read as follows:

(1) The Governor shall make all appointments to the board, appoint the administrative law judges, ***arbitrators,*** and the commissioner of the Department of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him by the Workers' Compensation Nominating Commission.

(2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:

(a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.

(b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.

3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.

(c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.

(d) The members shall annually select a chairman of the nominating commission.

(e) Notwithstanding the provisions of subsection (2) of this section at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this paragraph the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.

(3) The commissioner shall monitor the workload of the administrative law judges and arbitrators and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred twenty (120) days prior to the expiration of the terms of the administrative law judges and arbitrators, and when a vacancy occurs under other circumstances, the commissioner shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the commissioner.

(4) (a) The Workers' Compensation Nominating Commission shall consult with the commissioner, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of administrative law judges and arbitrators. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge or arbitrator, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the commissioner of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the commissioner's certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge or arbitrator shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge and as an arbitrator.

(b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.

[~~(3) The Governor shall appoint the administrative law judges in accordance with the provisions of KRS 342.230 from a list of names submitted by the Workers' Compensation Nominating Commission. The list shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.230. The administrative law judges shall be subject to Senate confirmation in accordance with KRS 11.160.~~]

(5)[~~(4)~~] The Governor shall appoint the commissioner of the Department of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The commissioner shall be subject to Senate confirmation in accordance with KRS 11.160.

(6)[~~(5)~~] (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than ***sixty (60)***[~~ninety (90)~~] days after a vacancy occurs.

(b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he shall vacate the position.

(7)[~~(6)~~] The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars ($100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

Section 8. KRS 342.215 is amended to read as follows:

(1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.

(2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his full time to the duties of his office.

(3) Each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who[~~ has resigned or~~] has been removed from his position prior to the expiration of his term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it.

(4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.

(5) Members of the Workers' Compensation Board***, arbitrators,*** and the administrative law judges shall be members of the Kentucky Employees Retirement System.

(6) The Workers' Compensation Board is abolished effective on July 1, 1998 and as of midnight, June 30, 1998, the terms of all Workers' Compensation Board members shall end. Thereafter, appeals from the final orders of administrative law judges shall be directed to the Court of Appeals under the same standards set forth in this chapter for appeals to the Workers' Compensation Board.

Section 9. KRS 342.228 is amended to read as follows:

(1) The Department of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The department shall be administered by a commissioner appointed by the Governor. The Governor shall select the commissioner from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The commissioner appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.

(2) The commissioner shall[~~ be an attorney and shall~~] have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

Section 10. KRS 342.230 is amended to read as follows:

(1) The commissioner, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the department's work. The employees of the Department of Workers' Claims, except the commissioner, ***arbitrators,*** administrative law judges, and board members, shall be members of the classified service.

(2) The commissioner of the Department of Workers' Claims shall have immediate supervision of the employees of the department, perform duties assigned him, and have complete authority to carry out all the administrative functions relating to the Department of Workers' Claims. The commissioner with the assistance of the board shall train and instruct the administrative law judges ***and arbitrators*** on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges***, arbitrators,*** and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board***,***[~~ and~~] the administrative law judges***, and arbitrators***; annually report the activities of the board***,***[~~ and~~] administrative law judges***, and arbitrators*** to the Governor; and devote his full time to the duties of his office. The commissioner shall be paid a salary not less than the salary of a member of the board.

(3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than sixteen (16) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, ***and***[~~or~~] extensive

knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge.[~~ The Governor shall appoint the administrative law judges from a list of three (3) names for each administrative law judge position submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213 and for this purpose only, a member of the Workers' Compensation Board shall serve as an ex officio member of the nominating commission.~~] Each administrative law judge may be employed for additional terms[~~ of four (4) years~~] with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case. ***To carry out the intent of this chapter and to implement its provisions, the commissioner shall have the authority to assign the duties of an arbitrator to an administrative law judge who shall work in that capacity as deemed necessary by the commissioner.***

(4) To ensure that the administrative law judges ***and arbitrators*** perform their responsibilities competently and issue decisions consistent with this chapter, the commissioner shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.

(5) The Governor may at any time remove the commissioner or any member of the board. The commissioner may remove any administrative law judge ***or arbitrator***. A member of the board or an administrative law judge ***or an arbitrator*** may be removed for good cause including: violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge***, an arbitrator,*** or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.

(6) Any vacancy in the term of an administrative law judge ***or an arbitrator***, which occurs prior to the expiration of the term, shall be filled ***if necessary*** by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.

(7) (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end***, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end***. On January 1, 1998, the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

(b) Effective at 12 midnight, December 31, ***1999***[~~1995~~], the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, ***2000***[~~1996~~], the Governor shall make four (4) year appointments to fill ***as many of*** these positions ***as are necessary to fulfill the duties assigned to administrative law judges under this chapter***.

[~~(c) On January 1, 1996, and January 1, 1998, as provided in paragraphs (a) and (b) of this subsection, and every fourth year thereafter, administrative law judges shall be appointed by the Governor for four (4) year terms and confirmed by the Senate in accordance with KRS 11.160. Confirmation hearings for administrative law judges shall be completed by the end of the regular session every four (4) years thereafter beginning with the 1996 Regular Session. Vacancies shall be filled in accordance with subsection (6) of this section.~~]

(8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those ***of other***[~~set forth in this section for~~] administrative law judges[~~, and to be subject to removal for the same reasons~~]. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the commissioner by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, ***and*** providing educational opportunities for the administrative law judges[~~, and supervising the work of the employees of the Department of Workers' Claims who provide staff support for the administrative law judges~~]. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional ***three***[~~one~~] thousand dollars ***($3,000)***[~~($1,000)~~] per year. ***At any time the commissioner may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter.*** The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the commissioner shall employ a person in this position for a four (4) year term.

(9) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4)

years except as set forth in subsection (11) of this section, not more than eight (8) arbitrators, each of whom shall have extensive knowledge in workers' compensation law and shall be paid the same salary as a District Judge. Each arbitrator may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an arbitrator, shall provide the name of the individual he intends to appoint to the position to the chairman of the Senate Economic Development and Labor Committee. The arbitrators shall conduct benefit review conferences, shall supervise the presentation of evidence, and shall render final decisions, orders, and awards. Arbitrators may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented as will expedite the preparation of the case.

(10) One (1) of the arbitrators appointed pursuant to this section shall be appointed chief arbitrator and in addition to the duties otherwise assigned arbitrators shall assist the commissioner in the scheduling of the activities of the arbitrators and in the supervision and training of arbitrators. The chief arbitrator shall be paid the same rate as the arbitrators plus an additional two thousand ($2,000) dollars per year. At any time, the commissioner may replace the chief arbitrator with one (1) of the other arbitrators at which time the former chief arbitrator shall resume the duties assigned to the other arbitrators pursuant to this chapter.

(11) (a) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1997. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

(b) The terms of four (4) arbitrators appointed pursuant to this section shall end at midnight, December 31, 1999. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to arbitrators pursuant to this chapter.

Section 11. KRS 342.265 is amended to read as follows:

(1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement *signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an arbitrator or administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the arbitrator or administrative law judge. Upon claims settled after the effective date of this Act, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the special fund mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.*

(2) Settlement agreements concluded after March 31, 1997, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than ten dollars ($10) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.

(3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. For settlements approved after the effective date of this Act, until December 31, 1997, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 1998, the commissioner shall fix the discount rate to be utilized in the succeeding year based upon the interest rate paid upon ten (10) year United States Treasury Notes as of July 1 of the preceding year.

(4) If the parties have previously filed an agreement which has been approved by the administrative law judge or arbitrator, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay~~[shall be filed with the administrative law judge, and, if approved by him, shall be enforceable as provided in KRS 342.305. In all cases where all parties have not joined in the settlement agreement, the administrative law judge shall not approve the agreement unless the agreement certifies that the party not participating in the settlement has received a copy of the settlement agreement at least ten (10) days prior to submission of the agreement for approval. Nothing herein shall prevent the voluntary payment of compensation in the amounts and for the periods prescribed in this chapter without formal agreement, but nothing shall operate as a final settlement except a memorandum of agreement filed with the~~

~~administrative law judge and approved by the administrative law judge in accordance with this section. No limitations of time shall begin to run until the date upon which the agreement is filed with and approved by the administrative law judge~~].

Section 12. KRS 342.270 is amended to read as follows:

(1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application to the commissioner for a hearing in regard to the matter at issue and for a ruling thereon. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. ***When the application is filed by the employee or during the pendency of that claim, he shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.***

(2) Except with respect to uncontested claims for retraining incentive benefits by reason of occupational pneumoconiosis related to exposure to coal dust, or for disability or death by reason of occupational diseases, within thirty (30) days after the application has been received the commissioner shall set the date for a prehearing conference, to be held as soon as practicable in view of the matter involved, and shall notify the parties at issue of the time and place of the prehearing conference.

(3) The prehearing conference shall be held at or convenient to the place where the employee resides, provided that such prehearing conference shall be held within the boundaries of the Commonwealth. At the prehearing conference, an administrative law judge shall confer informally with the parties at issue and their counsel, if any, for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposal of the case. If agreement upon any matter is reached, the administrative law judge shall write a memorandum setting forth the matters agreed upon. The administrative law judge and all parties shall sign the memorandum, and the administrative law judge shall file it with the commissioner. Once filed, the memorandum shall become a part of the record.

(4) If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.

(5) An application for adjustment of claim shall be held in abeyance by the administrative law judge during any period voluntary payments of compensation are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle him, unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

Section 13. KRS 342.275 is amended to read as follows:

(1) Within thirty (30) days after the filing of the benefit review determination with the commissioner, any party may appeal that determination by filing a request for hearing before an administrative law judge. Proceedings before the administrative law judge shall be de novo but subject to penalties for unreasonable proceedings under KRS 342.310.

(2) The commissioner shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a hearing. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(3) ~~[In any claim in which settlement is not reached at the prehearing conference, the administrative law judge shall hold a hearing on the matters at issue within sixty (60) days from the date of the prehearing conference in a location at or convenient to the place where the employee resides, except that the conference shall be held within the boundaries of the Commonwealth.]~~The administrative law judge may grant continuances according to criteria established in administrative regulations promulgated by the commissioner.~~[The commissioner shall notify the parties at issue of the time and place of the hearing.]~~ The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless ***extension is*** mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Section 14. KRS 342.281 is amended to read as follows:

Within fourteen (14) days from the date of the award, order, or decision any party may file a petition for reconsideration of the award, order, or decision of the ***arbitrator or*** administrative law judge. The petition for reconsideration shall clearly set out the errors relied upon with the reasons and argument for reconsideration of the pending award, order, or decision. All other parties shall have ten (10) days thereafter to file a response to the petition. The administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission.~~[The failure to file a petition for reconsideration~~

~~shall not preclude an appeal on any issue.~~]

Section 15. KRS 342.315 is amended to read as follows:

(1) ***The commissioner shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.***

(2) ***The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.***

(3) ***The commissioner, an arbitrator, or*** an administrative law judge may, upon the application of ***any***[~~either~~] party or upon his own motion, ***direct appointment by the commissioner, pursuant to subsection (1) of this section, of a medical evaluator***[~~appoint not more than three (3) disinterested and duly qualified physicians or surgeons~~] to make any necessary medical examination of the employee[~~ and to testify in respect thereto~~]. Such ***medical evaluator***[~~physicians or surgeons~~] shall file with the ***commissioner***[~~administrative law judge~~] within fifteen (15) days after such examination a written report. The ***medical evaluator***[~~physicians or surgeons~~] appointed may charge a reasonable fee not exceeding fees ***established by the commissioner***[~~permitted by administrative regulation~~] for ***those services***[~~testimony and reports in workers' compensation claims and by the workers' compensation medical fee schedule for physicians, to be paid out of the special fund~~].

(4) ***Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the commissioner that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.***

(5) ***Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.***

(6) ***Not less often than annually the designee of the secretary of the Cabinet for Health Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter***[~~(2) The party filing the motion for an examination shall pay the necessary and reasonable traveling expenses incurred by the employee in submitting to such examination. If the examination is ordered on the administrative law judge's own motion, then such traveling expenses shall be paid out of the special fund~~].

Section 16. KRS 342.316 is amended to read as follows:

(1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator[~~. Said employer shall have the right to contribution from each previous employer, as determined in an independent civil action, wherein the employee was similarly exposed to the hazard of said occupational disease, in a sum equal to the ratio that each exposure employment time bears to the total exposure employment time, except as otherwise provided in paragraph (a) of subsection (10) of this section~~]; and

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later[~~, except that the time of the beginning of retraining incentive benefits awarded under KRS 342.732 shall be the date the award for those benefits by the administrative law judge becomes final~~].

(2)[~~ (a)~~] The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur.[~~;~~]

(3) [~~(b) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to~~] filing ***occupational disease***[~~of~~] claims shall be as follows:

(a)[~~1. a.~~] The application ***for resolution of claim*** shall set forth the complete work history of the ***employee***[~~applicant~~] with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least ***one (1)***[~~two (2)~~] written medical ***report***[~~reports~~] supporting his claim. ***This***[~~These~~] medical ***report***[~~reports~~] shall be made on the basis of[~~ comprehensive~~] clinical ***or X-ray examination***[~~ examinations~~] performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The ***report***[~~reports~~] shall be made by ***a*** duly-licensed ***physician***[~~physicians~~]. The commissioner shall promulgate administrative regulations which prescribe the format of the medical ***report***[~~reports~~] required by this section and the manner in which the ***report***[~~reports~~] shall be completed.

1.[~~b.~~] For coal-related occupational pneumoconiosis claims, each clinical examination shall include ***a*** chest X-ray ***examination as well as***[~~examinations and~~] spirometric tests ***when pulmonary dysfunction is alleged.***

2.[~~c.~~] For other compensable occupational pneumoconiosis claims, each clinical examination shall include ***a chest*** X-ray ***examination***[~~examinations~~] and appropriate pulmonary function tests.

(b)[~~2.~~] To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust, shall comply with accepted medical standards as follows:

1.[~~a.~~] Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report.

2.[~~b.~~] Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of [~~subsection (2)(b) of~~]this section. The commissioner shall periodically review the applicability of the spirometric test values contained in the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. [~~(c) Except as provided in paragraph (d) of this subsection,~~]The procedure ***for***[~~with respect to the~~] determination of ***occupational disease*** claims shall be as follows:

a.[~~1.~~] Immediately upon receipt of ***an application for resolution***[~~said application for adjustment~~] of claim, the commissioner shall notify the ***responsible***[~~affected~~] employer,[~~ the special fund,~~] and ***all***[~~any~~] other interested ***parties***[~~party of such claim~~] and shall furnish them with a full and complete copy of the ***application.***[~~claim;~~]

b. The commissioner shall assign the claim to an arbitrator and shall promptly refer the employee to such physician or medical facility as the commissioner may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the commissioner for examination within two (2) years following any prior referral for examination for the same disease.

c. Within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the commissioner and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial.

d. The arbitrator shall conduct such proceedings as are necessary to resolve the claim, and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.

e. Unless a voluntary settlement is reached by the parties, the arbitrator shall issue a written determination within ninety (90) days following assignment of the claim. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.

5. The procedure for appeal from a determination of an arbitrator shall be as set forth in KRS 342.275.

[~~2. Upon receipt of notice of the claim, the employer, the special fund, and any other interested party shall have the right to have the claimant examined by competent medical experts, at their expense, including a reasonable sum for travel. Within thirty (30) days of any such examination, the claimant or his representative shall be furnished a copy of said medical report by the party requesting such report. Also, the employer, the special fund, or any other party to the claim shall have the right to have the claimant evaluated by vocational experts or institutions, at the employer's expense, including a reasonable sum for travel. Within thirty (30) days of any vocational examination, the claimant or his representative, shall be furnished a copy of that vocational report by the party requesting that report; and~~

~~3. Within sixty (60) days of the receipt of the claim, the employer, the special fund, and any other interested party shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, then an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall set a date for a prehearing conference and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the commissioner shall be followed. Upon request of an interested party and a showing of good cause, the administrative law judge may extend, one (1) time, the time period for filing a notice of resistance as prescribed in this subparagraph, but the extension shall not exceed thirty (30) days.~~

~~(d) For claims filed under subsection (1)(a) of KRS 342.732, the procedure shall be as follows:~~

~~1. For retraining incentive benefits under KRS 342.732, the claimant shall file two (2) X-rays and the reports thereof which shall conform to the standard for X-rays contained in this subsection.~~

~~2. The commissioner shall notify the affected employer of the claim and shall furnish him with a full and complete copy of the claim.~~

~~3. Within sixty (60) days of the receipt of the claim, the employer shall notify the commissioner and the claimant whether or not the claim will be resisted. If the claim is not resisted, an administrative law judge shall within ten (10) days enter an order and award for the claimant. If the claim is resisted, the administrative law judge shall notify the affected employee thereof. In litigated claims, the regular procedures prescribed by the commissioner shall be followed.~~]

(4)[~~(3)~~] (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or, if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

(b) Income[~~ or retraining incentive~~] benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

(5)[~~(4)~~] The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation

Act, but:

(a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;

(b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and

(c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section***, except as provided in KRS 342.750(6)***.

(6)[~~(5)~~] If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

(7)[~~(6)~~] No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(8)[~~(7)~~] No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.

(9)[~~(8)~~] Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard[~~ by the administrative law judge~~] when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

(10)[~~(9)~~] When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided in this chapter.

(11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in Section 34 of this Act and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.

(b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.

(12) A concluded claim for benefits by reason of contraction of coal workers pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.

[~~(10) (a) Except as provided in paragraph (c) of this subsection, the employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employee was last exposed to the hazard of that occupational disease. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the special fund for all claims filed prior to January 1, 1973, and seventy-five percent (75%) shall be paid by the special fund and twenty-five percent (25%) by the employer for all claims filed thereafter. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disability only after an exposure of five (5) or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such~~

~~diseases shall be paid jointly by the employer and the special fund, and the employer shall be liable for sixty percent (60%) of the compensation due and the special fund shall be liable for forty percent (40%) of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the special fund under this section, all of the compensation awarded shall be paid pursuant to KRS 342.120 and under such regulations as the commissioner may provide for such purpose; and~~

~~(b) In all claims for compensation partially payable by the special fund, the Director of the Division of the Special Fund shall be designated as codefendant.~~

~~(c) The employer in whose employment the employee was last exposed to the hazard of the disease shall alone be liable for payment of retraining incentive benefits awarded under KRS 342.732.~~]

Section 17. KRS 342.320 is amended to read as follows:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of ***an***[~~the~~] administrative law judge ***or arbitrator*** pursuant to the statutes and administrative regulations.

(2) Attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) Twenty percent (20%) of the award not to exceed two thousand dollars ($2,000) for services performed up to and including the date of a written determination by the arbitrator. This fee shall be paid by the employee from the proceeds of the award or settlement.

(b) Upon an appeal by an employee from a written determination of an arbitrator or an award or order of an administrative law judge, a fee to be fixed by the administrative law judge upon consideration of the extent, quality and complexity of services not to exceed twenty percent (20%) of the first twenty-five thousand dollars ($25,000) of any increased income benefits awarded, ten percent (10%) of the next fifteen thousand dollars ($15,000) of increased income benefits, and five percent (5%) of the remainder of the additional income benefits awarded and not to exceed in all ten thousand dollars ($10,000). This fee shall be paid by the employee from the proceeds of the award or settlement and shall be in addition to the fee, if any, awarded under subsection (2)(a) of this section.

(c) Upon an appeal by an employer or carrier from a written determination of an arbitrator or an award or order of an administrative law judge, if the employer or carrier does not prevail upon appeal, the administrative law judge shall fix an attorney's fee to be paid by the employer or carrier for the employee's attorney upon consideration of the extent, quality, and complexity of the services rendered not to exceed five thousand dollars ($5,000) per level of appeal. This attorney's fee shall be in addition to any fee awarded under subsections (2)(a) and (b) of this section.

(d) Attorney-client employment contracts entered into and signed prior to the effective date of this Act for injuries or date of last exposure occurring prior to the effective date of this Act shall not be subject to the conditions of subsections (a), (b), and (c) of this section, and the law existing at the date of the injury or last exposure to the hazards of an occupational disease shall apply.

(3) In approving an allowance of attorney's fees, the administrative law judge or arbitrator shall consider the extent, complexity, and quality of services rendered, and[~~In an original claim, no attorney's fees shall be allowed or approved against any party not represented by an attorney, nor shall any attorney's fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first twenty-five thousand dollars ($25,000), fifteen percent (15%) of the next ten thousand dollars ($10,000), and five percent (5%) of the remainder of the amount recovered, except where applicable~~] in the case of death,[~~ and then by the use of~~] the Remarriage Tables of the Dutch Royal Insurance Institute. ***An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court***[~~However, in no event shall the attorney's fee exceed fifteen thousand dollars ($15,000)~~].[~~ The administrative law judge, in making an allowance of attorney's fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The factors to be considered by the administrative law judge in making the allowance of an attorney's fees shall include, but not necessarily be limited to: nature, scope, and quality of the attorney's services; level of skill and competence required of the attorney in rendering the services; results achieved; experience and skill level of the attorney; and contingent nature of the case. The administrative law judge may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment. Any award made to a claimant in a nonresisted claim under KRS 342.732, 342.316, or in a claim under KRS 342.732(1)(a) for an employee who continues to work in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a) shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~]. The date of injury or last exposure shall control the applicable maximum attorney's fee[~~, except that the date the claim is filed shall control the maximum fee as to all claims filed under KRS 342.732(1)(a) for an employee who continues to work in the mining industry engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a). Any award made to a~~

~~claimant in a nonresisted claim as established under the provisions of KRS 342.316 shall result in an award of an attorney's fee not exceeding seven hundred fifty dollars ($750)~~].

(4)[~~(2)~~] No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the ***arbitrator or*** administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the ***written determination of an arbitrator or*** last appealable order of ***an***[~~the~~] administrative law judge. ***Except when the attorney's fee is to be paid by the employer or carrier,*** the attorney's fee shall be paid in one (1) of the following ways:

(a) The ***employee***[~~claimant~~] may pay the attorney's fee out of his personal funds or from the proceeds of a lump-sum settlement; or

(b) The ***arbitrator or*** administrative law judge, upon request of the ***employee***[~~claimant~~], may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the ***employee***[~~claimant~~] in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

(5)[~~(3)~~] ***At the commencement of the attorney-client relationship,*** the attorney shall explain to the ***employee***[~~claimant~~] the methods by which this section provides for the payment of the attorney's fee, and the ***employee***[~~claimant~~] shall select the method in which his attorney's fee is to be paid. His selection and statement that he fully understands the method to be used shall be submitted by his attorney, on a notarized form signed by the ***employee***[~~claimant~~], at the time the motion for approval of the attorney's fee is submitted. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and ***contain*** an explanation in nontechnical language of each method.

(6)[~~(4)~~] The General Assembly declares that by the enactment of KRS 342.316***(3)***[~~(2)(b)~~], it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge ***and arbitrator*** shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.

(7)[~~(5) The administrative law judge shall approve any contract between attorney and client if the fees are reviewed and approved by the administrative law judge pursuant to subsection (1) of this section and if the limits on fees enumerated below are followed:~~

~~(a) When the claim is uncontested under the provisions of KRS 342.316, the attorney's fee shall not exceed an amount equal to seven hundred fifty dollars ($750).~~

~~(b) In all other claims, the fee of the attorney shall not exceed the amounts provided in subsection (1) of this section.~~

~~(6) (a)~~] In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the ***arbitrator or*** administrative law judge ***subject to the limits set forth in subsection (2) of this section.*** In awarding the attorney's fee, the ***arbitrator or*** administrative law judge shall consider the factors set forth in subsection ***(3)***[~~(1)~~] of this section. ***If no additional amount is recovered upon reopening, no attorney's fee shall be awarded***[

~~(b) Thereafter, the administrative law judge shall fix the attorney's fee~~]. No[~~ attorney's fee shall be allowed or approved against any party not represented by that attorney, nor shall any~~] attorney's fee ***shall*** be allowed or approved exceeding the amounts provided in subsection ***(2)(b)***[~~(1)~~] of this section applicable to any additional amount recovered.[~~ If there is no additional amount recovered in a reopened claim, there shall be no attorney's fee.~~]

(8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge or arbitrator in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the same limitations as to maximum fees at each level except that fees for representation before administrative law judges shall not exceed ten thousand dollars ($10,000) and fees for representation before arbitrators shall not exceed two thousand dollars ($2,000). Fees for representing employers shall not be dependent upon the result achieved. Fees for legal services in presenting a claim for re-imbursement to the director of the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars ($1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

(9) Notwithstanding any provisions of law to the contrary, the provisions of this chapter shall not be construed or interpreted to prohibit non-attorney representation of injured workers covered by this chapter.

Section 18. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 19. KRS 342.335 is amended to read as follows:

(1) No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to ***delay or*** omit to claim title thereto or to accept the payment of a less sum than that to which he may be lawfully entitled to thereunder.

(2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, shall be subject to the civil or criminal penalties, or both, imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the commissioner shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his profession in the Commonwealth of Kentucky.

(3) All workers' compensation fraud investigations, except for claimant fraud investigations conducted by the Division of Special Fund, shall be conducted by the Department of Insurance~~[or the Attorney General]~~.

SECTION 20. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly hereby finds and declares that the establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation, to make provisions for the general welfare of workers and their dependents, to relieve the consequences of any industrial injury or death, and to secure the payment of workers' compensation benefits provided by this chapter.

(2) The General Assembly further finds and declares that provision must be made for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet obligations because of insolvency. It is for that purpose that the General Assembly establishes mechanisms requiring the establishment of three (3) distinct nonprofit, unincorporated guaranty associations, one (1) of whose members shall be composed of individually self-insured employers excluding individually self-insured coal employers and public sector employers; one (1) shall be composed of group self-insurers created pursuant to KRS 342.350(4); and one (1) shall be composed of individually self-insured coal operators.

SECTION 21. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

As used in Section 20 to 26 of this Act, unless the context requires otherwise:

(1) "Insolvent self-insurer" means either an individual self-insured employer or a group self-insurer who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the commissioner, or who has failed to provide compensation and who has been issued a certificate of default by the commissioner and whose security deposit has been called by the commissioner.

(2) "Member" means a self-insured employer or self-insurance group that participates in a guaranty fund created pursuant to Sections 20 to 26 of this Act.

(3) "Guaranty fund" means one of the three (3) guaranty funds established pursuant to Sections 20 to 26 of this Act.

(4) "Directors" means the board of directors of a guaranty fund.

(5) "Certificate of default" means a notice issued by the commissioner based upon a finding that a self-insured employer or self-insurance group has failed to pay compensation required by this chapter.

SECTION 22. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of law, public sector self-insured employers or self-insurance groups are specifically exempted from the provisions of Sections 20 to 26 of this Act.

SECTION 23. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each noncoal, individually self-insured employer who has qualified and been certified by the commissioner as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The commissioner shall revoke any self-insurer's

certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.

(2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insurance groups or associations established under KRS 342.350(4), to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each self-insurance group or association that is authorized to self-insure and certified by the commissioner to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The commissioner shall revoke any authorization and certificate to self-insure of any self-insurance group or association for failure to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection .

(3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the commissioner. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The commissioner shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

(4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insurance group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance or reinsurance, required by this chapter. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a "plan of operation" pursuant to administrative regulations promulgated by the commissioner.

(5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting and the designee's actions shall be deemed those of the member.

(6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insurance group or association. In addition, the commissioner of the Department of Workers' Claims and the commissioner of the Department of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.

(7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the commissioner, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance, and borrow funds as it deems necessary for the protection of the members and their employees.

(8) Security called by the commissioner and dispersed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly, or any other state agency.

(9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.

(10) No liability shall lie, whether at law or in equity, against any director, agent or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

SECTION 24. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner shall notify a guaranty fund if the commissioner has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent

jurisdiction has declared the member to be bankrupt or insolvent.

(2) In the event of issuance of a certificate of default, the commissioner shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The commissioner shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the commissioner. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the department of workers' claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.

(3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.

(4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars ($1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).

(5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars ($500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars ($500,000) or such other amount not to exceed, in any event, one million dollars ($1,000,000) based upon a maximum annual assessment for each guaranty fund.

(6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members, unless the guaranty fund has the assets prescribed in subsection (5) of this section and the distributions are approved by the commissioner .

(7) The commissioner shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the commissioner to carry out the commissioner's obligations under this chapter, and the commissioner shall provide this information to the guaranty fund as necessary to carry out its obligations.

(8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

SECTION 25. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) Each guaranty fund, by making payment of compensation under this chapter, has the same preference over the other debts of the principal or the principal's estate as is given by law to the person directly entitled to the compensation.

(2) Notwithstanding subsection (1) of this section, each guaranty fund shall not be liable for the payment of any penalties or interest assessed for any act or omission on the part of any person, including but not limited to the penalties provided in this chapter.

(3) Each guaranty fund shall be a party in interest in all proceedings involving compensation claims against an

insolvent member whose compensation obligations have been paid or assumed by the guaranty fund. The guaranty fund shall have the same rights and defenses as the insolvent individual self-insurer.

(4) Each guaranty fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by each guaranty fund, including reasonable administrative and legal costs.

(5) Each guaranty fund shall have the right to bring an action against any person or entity to recover compensation paid and liability assumed by the guaranty fund, including but not limited to any excess insurance carrier of the insolvent member.

SECTION 26. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the commissioner and to each member.

(2) Each guaranty fund shall be established on March 1, 1997.

(3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the commissioner has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

Section 27. KRS 342.610 is amended to read as follows:

(1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.

(2) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another (a) to have work performed consisting of the removal, excavation or drilling of soil, rock or mineral, or the cutting or removal of timber from land, or (b) to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of such person, shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

(3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by~~[his]~~ intoxication***, the influence of an illegal drug or drugs,*** or by his willful intention to injure or kill himself or another.

(4) If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his employer to produce such injury or death, the employee or his dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.

(5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage from the builder before a permit is issued. A person who is exempt under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter, shall so certify to the local building official, in writing and on a form prescribed by the commissioner, in lieu of providing proof of workers' compensation coverage.

(6) Every employer subject to this chapter, at its principal office and such other locations where employees customarily report for payroll and personnel matters shall, post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. The format and contents of the notice shall be established by the commissioner through administrative regulation and copies shall be provided to the employer by its insurance carrier.

Section 28. KRS 342.640 is amended to read as follows:

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(2) Every executive officer of a corporation;

(3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire or police department shall be deemed for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled volunteer member or trainee of the civil defense corps of this state, as established under KRS Chapter 39, shall be deemed for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed for the purposes of this chapter to be in the employment of this state;

(4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(5) Subject to the provisions in subsection (4) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

Section 29. KRS 342.715 is amended to read as follows:

Notwithstanding the provisions of KRS 342.730, during the period the employee is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, pursuant to an order of the ***arbitrator or*** administrative law judge, the employee's benefits shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of the state's average weekly wage, times the ***permanent***[~~percentage of~~] disability ***rating*** as determined in this chapter.

Section 30. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

(a) For ***temporary or permanent*** total disability[~~ due to a work related injury or occupational disease~~], sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related ***impairment and conditions compensable under KRS 342.732 and hearing loss covered in Section 38 of this Act***[~~disability~~] shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

(b) For permanent[~~,~~] partial disability,[~~ where an employee returns to work at a wage equal to or greater than the employee's preinjury wage,~~] sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by ***the permanent***[~~his percentage of~~] impairment ***rating*** caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, ***times the factor set forth in the table that follows:***[~~ unless the employee establishes a greater percentage of disability as determined under KRS 342.0011(11), in which event the benefits shall not exceed two (2) times the functional impairment rate, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks subject to the provisions of subsection (1)(d) of this section.~~]

AMA Impairment	***Factor***
0 to 5%	***0.75***
6 to 10%	***1.00***
11 to 15%	***1.25***
16 to 20%	***1.50***
21 to 25%	***1.75***
26 to 30%	***2.00***
31 to 35%	***2.25***
36 and above	***2.50***

[~~The period of ~~]Disability under this paragraph for nonwork-related disabilities ***and conditions previously***

compensated under this chapter shall not extend the maximum period ***or the amount*** of ***partial*** disability ***benefits***[~~ under this paragraph~~]. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(c) ***1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be one and one-half (1.5) times the amount otherwise determined under subsection (1)(b) of this section, but this provision shall not be construed so as to extend the duration of payments.***

2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability otherwise payable under subsection (1)(b) of this section shall be reduced by one-half (1/2) for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be restored to the rate prescribed in subsection (1)(b) of this section.

3. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subsection (1)(c)2. of this section.[~~ For permanent, partial disability, except all cases described in subsection (1)(b) of this section, sixty six and two thirds percent (66 2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by his percentage of disability caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, or under KRS 342.0011(11), whichever is greater, for a maximum period from the date the disability arises, of four hundred twenty-five (425) weeks, subject, however, to the provisions of subsection (1)(d) of this section. The period of disability under this paragraph for nonwork-related disabilities shall not extend the maximum period of disability under this paragraph. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.~~]

(d) For permanent[~~,~~] partial disability, if an employee ***has a permanent***[~~sustains impairment or~~] disability ***rating***[~~ in excess~~] of fifty percent (50%) ***or less*** as a result of a work-related injury[~~ or occupational disease and prior work-related active disability~~] the compensable permanent partial disability period shall[~~ then~~] be ***four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be*** five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. ***Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to subsection (1)(c)1. of this section which shall not exceed one hundred percent (100%) of the state average weekly wage nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in subsection (1)(b) of this section would yield a greater percentage of disability.***

(e) For permanent disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in Section 38 of this Act shall not be considered in determining the extent of disability or duration of payments under this chapter[~~Nonwork-related impairment or disability and claims under KRS 342.732 shall not be considered in determining whether the employee is impaired or disabled in excess of fifty percent (50%) for purposes of this subsection~~].

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability

compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or

(b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or

(c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.

(e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

(4) ***All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old age Social Security retirement benefits***~~[If the injury or last exposure occurs prior to the employee's sixty-fifth birthday, any income benefits awarded under KRS 342.750, 342.316, 342.732, or this section shall be reduced by ten percent (10%) beginning at age sixty-five (65) and by ten percent (10%) each year thereafter until and including age seventy (70). Income benefits shall not be reduced beyond the employee's seventieth birthday]~~.

(5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.

(6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan, which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.

(7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

Section 31. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

(1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.

(d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, 25 percent.

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his disability from an occupational disease began.

(6) ***In addition to other benefits as provided by this chapter,*** if death occurs ***within four (4) years of the date of injury*** as a direct result of a work related injury,[~~ and the deceased has no statutory dependents, as determined by this section,~~] a lump-sum payment of ***twenty-five thousand dollars ($25,000)***[~~$10,000~~] shall be ***made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be*** paid[~~ to his estate, in addition to the amount provided for in KRS 342.720; provided, however, that the lump-sum payment shall be reduced by any income benefits previously paid on account of that injury~~].

(7) All benefits awarded pursuant to this section***, other than those provided in subsection (6) of this section,*** shall be subject to the limitations contained in KRS 342.730(4).

Section 32. KRS 342.760 is amended to read as follows:

(1) There is hereby authorized in the Labor Cabinet an uninsured employers' fund for the purpose of making payments in

accordance with the provisions of subsection (4) of this section. The secretary of the Labor Cabinet shall be the custodian of the fund and all moneys and securities in the fund shall be held in trust by the secretary of the Labor Cabinet and shall not be considered a part of the general funds of the state.

(2) The secretary of the Labor Cabinet is authorized to disburse moneys from the fund only upon written order of the ***arbitrator,*** administrative law judge***,*** or the board.

(3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.

(4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of ***all*** the amounts authorized to be paid therefrom under the authority of this subsection ***including reimbursement of the special fund of all liability apportioned to it*** and for the purposes of enforcing this liability the Labor Cabinet, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. ***This provision shall apply to all pending claims upon which a final order has not been entered.***

(5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The Labor Cabinet shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.

(6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the Labor Cabinet pursuant to this section.

Section 33. KRS 342.732 is amended to read as follows:

(1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust ***in the severance or processing of coal*** shall be paid as follows:

(a) If ***an employee has a radiographic classification of category 1/1 or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by report of X-ray which conforms to the standards for X-rays contained in subsection (3) of KRS 342.316, and respiratory impairment resulting from exposure to coal mine dust as evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined by KRS 342.740 but not more than seventy-five percent (75%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks. These benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking twenty-four (24) or more instruction hours per week in a bona fide training or education program approved***[~~the administrative law judge finds that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, based on the latest ILO International Classification of Radiographics, resulting from exposure to coal dust, which is validated by two (2) X rays and reports of the X-rays which conform to the standards for X rays contained in subsection (2) of KRS 342.316, he shall award a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by fifty percent (50%) and shall be payable for a period not to exceed two hundred and eight (208) weeks. These benefits may be paid directly to the employee only if the employee is not working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), in which event the one (1) time only retraining incentive benefit awarded under this paragraph may be collected semimonthly as provided in KRS 342.040. While the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a), and if the employee is enrolled and actively participating in a bona fide training or education program approved~~] under administrative regulations to be promulgated by the commissioner***. The employer shall also pay***,[~~ benefits awarded under this paragraph shall be paid~~] directly to the institution conducting the training or education program***, instruction, tuition, and material costs not to exceed five thousand dollars ($5,000)***[~~on a semimonthly basis~~]. The benefit shall not be paid for a period in which the employee ceases to participate in the program. In no event shall the benefit be paid to the employee while the employee is working in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a)***. The period of one hundred four (104) weeks during which this benefit is payable shall begin no later than the one hundred eightieth day after the order awarding the benefit becomes final. If an employee completes an approved program of training in less than one hundred four (104) weeks and that employee has accepted a bona fide offer of employment at a location more***

than fifty (50) miles from the employee's usual residence in the field for which the employee has been trained, the employee shall be paid in a lump sum for relocation the lesser of the sum of three thousand dollars ($3,000) or the amount remaining in unpaid weekly training benefits as provided by this section[~~, nor shall the employee personally receive any benefits pursuant to this award other than for traveling expenses. When the employee, through no fault of his own, is no longer working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a), then any remaining benefits shall be paid directly to the employee on the same monthly basis as provided in KRS 342.040~~].

(b) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category[~~ 1/0,~~] 1/1[~~,~~] or 1/2, based on the latest ILO International Classification of Radiographics[~~,~~] and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of ***less than*** fifty-five percent (55%)[~~ or more but less than eighty percent (80%)~~] of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the guides to the evaluation of permanent impairment published by the American Medical Association***, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values***[~~;,~~] there shall be an irrebuttable presumption that the employee has an occupational disability rating of ***fifty***[~~seventy-five~~] percent ***(50%)***[~~(75%)~~] resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage multiplied by the disability rating of ***fifty percent (50%)***[~~seventy-five (75%)~~] but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740. The award shall be payable for a period not to exceed four hundred[~~ and~~] twenty-five (425) weeks, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(c) If ***it is determined***[~~the administrative law judge finds~~] that an employee has a radiographic classification of category ***2/1, 2/2, or 2/3 coal workers' pneumoconiosis***[~~1/0, 1/1, or 1/2~~], based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the chapter on the respiratory system of the latest edition available of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association ***or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values,*** there shall be an irrebuttable presumption that the employee is ***seventy-five percent (75%)***[~~totally~~] disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage ***multiplied by the disability rating of seventy-five percent (75%)*** but not ***to exceed***[~~more than~~] ***seventy-five***[~~ one hundred~~] percent ***(75%)***[~~(100%)~~] of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined by KRS 342.740. ***The award shall be payable for a period not to exceed five hundred twenty (520) weeks.*** Income benefits awarded under this paragraph shall be payable to the employee during the disability, but in no event shall ***benefits***[~~a claim~~] be ***paid***[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(d) If ***it is determined***[~~the administrative law judge finds~~] that an employee has ***radiographic classification of 3/2 or 3/3*** occupational pneumoconiosis ***based on the latest ILO International Classification of Radiographs, and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values contained in the latest edition of the "Guides to the Evaluation of Permanent Impairment" of the American Medical Association,***[~~with a radiographic classification of category 2/1, 2/2, 2/3, 3/2, 3/3,~~] or progressive massive fibrosis, based on the latest ILO International Classification of Radiographics, there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust and the ***employee***[~~administrative law judge~~] shall ***be awarded***[~~award~~] income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability, but in no event shall ***benefits***[~~a claim~~] be paid[~~filed~~] under this subsection while the employee continues to work in the mining industry in the severance and processing of coal as defined in KRS 342.0011(23)(a).

(2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.

(3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge ***or arbitrator*** that

spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge ***or arbitrator*** shall make his decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula (103.5 - 0.42X), where X equals the claimant's age at the time of the arterial blood gas study.

(4) In no event shall income benefits awarded under[~~ paragraphs (a) or (b) of subsection (1) of~~] this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability.

SECTION 34. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) There is created the Division of the Kentucky Coal Workers' Pneumoconiosis Fund in the Department of Workplace Standards which shall be headed by a director appointed by the commissioner, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration and legal representation of the fund and the maintenance of records regarding the payment of claims by the fund.

(2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the commissioner of the Department of Workers' Claims.

(3) The Kentucky coal workers' pneumoconiosis fund shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after the effective date of this Act. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the Kentucky coal workers' pneumoconiosis fund is established under subsection (4) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.

(4) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every group of self-insurers operating under the provisions of KRS 342.350(4), from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.

(b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents ($0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.

(c) As of September 1, 1997, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than December 1 of the year preceding the rate change.

(5) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its

powers and responsibilities relating thereto.

(6) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

(7) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.

(8) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732 and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).

SECTION 35. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The commissioner or his designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds or self-insured groups and shall have free access to books and documents relating to the self-insurance activities of the entity. The commissioner shall so examine each self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(i).

(2) All individual self-insured employers and self-insurance groups shall file with the commissioner a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year. For self-insurance groups, the financial statement shall include an actuarial opinion by a member or fellow of the Casualty Actuarial Society and a supporting reserve study regarding reserves for claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods used. Such documentation shall include but not be limited to the following:

- *(a) Case reserves on known cases by accident period, both for losses and allocated loss adjustment expenses;*
- *(b) Estimates of claims that have been incurred but not reported by accident period for both losses and allocated loss adjustment expenses;*
- *(c) The method of discounting and the discount rate selected for case reserves and incurred but not reported losses; and*
- *(d) Estimates of ultimate losses and allocated loss adjustment expenses for the prospective accident period and unallocated loss adjustment reserves.*

(3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the commissioners' designees, and expert assistance as necessarily incurred in the examination.

(4) The Department of Insurance shall approve the form and contents of excess insurance policies and upon request of the commissioner shall review the application for approval of any self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

(5) Not less often than biennially the commissioner of the Department of Insurance shall review the activities, procedures, administrative regulations, and policies of the Department of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of self-insureds so that payment of liabilities to workers under this chapter is assured.

SECTION 36. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

- *(a) "Employer leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement.*
- *(b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement.*
- *(c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.*
- *(d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee*

leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers.

(e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time.

(f) "Temporary help service" means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's work force in special work situations, including employee absences, temporary skill shortages, and seasonal workloads.

(2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the commissioner in the manner as prescribed by administrative regulations.

(3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the commissioner or to remain registered, if previously registered.

(4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers' compensation policy approved by the commissioner of the Department of Insurance. A lessee may fulfill that responsibility by contracting with an employee leasing company to purchase and maintain the required insurance policy. In either event, it shall be the responsibility of the lessee to maintain in its files at all times the certificate of insurance, or a copy thereof, evidencing the existence of the required insurance. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.

(5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

Section 37. KRS 304.47-040 is amended to read as follows:

(1) There is created within the Department of Insurance an Insurance Fraud Unit*, which shall include a workers' compensation branch*.

(2) *(a)* The commissioner shall appoint qualified persons to serve as special investigators for the Insurance Fraud Unit who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.

(b) The commissioner shall appoint appropriate staff for the workers' compensation branch which shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The appointments authorized by this paragraph shall be in addition to the staff employed by the Insurance Fraud Unit as of the effective date of this Act.

(3) The special investigator may:

(a) Administer oaths and affirmations;

(b) Order the attendance of witnesses or proffering of information and documentation;

(c) Collect evidence; and

(d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:

1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;
2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and
3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.

(4) The unit may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.

(5) If the information the unit seeks to obtain is located outside the state, the person so requested may make it available to the unit or its representative to examine at the place where it is located. The unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on the unit's behalf, and it may respond to similar requests from officials of other states.

(6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the commissioner under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.

SECTION 38. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment the extent of binaural hearing impairment shall be determined under the latest available edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment."

(2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730 except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than eight percent (8%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.

(3) The commissioner shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.

(4) When audiograms and other testing reveal a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace there shall be a rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

Section 39. KRS 342.803 is amended to read as follows:

(1) The ***Kentucky*** Employers' Mutual Insurance Authority is created as a nonprofit, independent, self-supporting de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to insure employers in the Commonwealth for workers' compensation, employers' liability insurance and coverage required by the Federal Coal Mine Health & Safety Act, the Jones Act and the Longshore and Harbor Workers Act incidental to and written in conjunction with workers' compensation. The authority shall function in a manner similar to a governing board for a domestic mutual insurance company and shall be subject to the provisions of[~~ Subtitle 24 and other provisions of~~] KRS Chapter 304 applicable to domestic mutual insurance companies unless otherwise provided or exempted in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

(2) Except for initial funding for start-up, the authority shall be entirely self-supporting.

(3) The authority or its liabilities shall not be deemed to constitute a debt or a liability of the Commonwealth or a pledge of the faith and credit of the Commonwealth.

(4) [~~On or before September 1, 1995, ~~]The authority shall[~~ begin to~~] provide coverage and issue policies[~~, as provided in subsection (1) of this section,~~] as an insurer in the voluntary market and as ***an insurer of last resort***[~~a residual market mechanism~~].

Section 40. KRS 342.805 is amended to read as follows:

As used in KRS 342.801 to 342.843[~~ and KRS 304.13-340~~], unless the context otherwise requires:

(1) "Authority" means the ***Kentucky*** Employers' Mutual Insurance Authority.

(2) "Board" means the board of directors of the authority.

(3) ***"Insurer of last resort" means an entity that provides workers' compensation coverage to any and all employers who comply with the provisions of KRS 342.801 to 342.843 for their business in and incidental to the Commonwealth.***

(4) "Manager" means the manager of the authority.

(5)[~~(4)~~] "Policyholder" means an employer in the Commonwealth or an employer with an employee or employees in the Commonwealth who has secured and maintains workers' compensation coverage under this authority.

Section 41. KRS 342.811 is amended to read as follows:

The board of directors of the authority shall function in a manner similar to the governing body of a mutual insurance company established pursuant to[~~ Subtitle 24 of~~] KRS Chapter 304, with all of the general corporate powers incidental thereto. The powers and duties of the board shall include, but not be limited to, the power to:

(1) Sue or be sued;

(2) Hire a manager to administer the authority;

(3) Adopt a corporate seal;

(4) Develop bylaws for the operation of the authority;

(5) Develop bylaws to establish the contingent liability of the policyholders for assessment purposes required in KRS 342.823;

(6) Examine and adopt an annual operating budget for the authority;

(7) Serve as investment trustees and fiduciaries of the authority in accordance with the provisions of KRS Chapter 386;

(8) Incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds;

(9) Develop broad policy for the long-term operation of the authority consistent with its mission and fiduciary responsibility;

(10) Adopt a procurement policy consistent with the provisions of KRS Chapter 45A;

(11) Develop and publish an annual report to policyholders, the Governor, the General Assembly, and interested parties that describes the financial condition of the authority, including a statement of expenses, income, and actuarial soundness***;***[~~.~~]

(12) ***Pursuant to***[~~Subject to Subtitle 13 of~~] KRS Chapter 304, determine and establish an actuarially-sound price for insurance offered by the authority, including any dividends or deviations;

(13) Pursuant to KRS 342.823, assess policyholders[~~ to cover its liabilities as provided in KRS 304.24-230~~]; and

(14) Perform all other acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the authority, either in the administration or in connection with the business of the authority to fulfill the purpose of KRS 342.801 to 342.843[~~ and KRS 304.13-340~~].

Section 42. KRS 342.817 is amended to read as follows:

(1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks ***for the authority.***

(2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the ***market of last resort***[~~residual market~~] and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.

(3) Multitiered premium or rating plans may be developed to provide ***workers' compensation*** coverage to insureds ***in the Commonwealth***[~~in the residual market mechanism established by the authority, and who would not otherwise meet the underwriting standards required by the authority~~].

(4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a ***market of last resort***[~~residual market mechanism~~].

(5) The rates ***established***[~~developed~~] by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.

(6) ***Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the insurance commissioner in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.***

(7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for ***eighty-four (84)***[~~thirty-six (36)~~] months***, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the Labor and Industry Committee of the General Assembly, no later than October 31 of each year, on the status of its efforts to build and maintain a surplus as required by KRS Chapter 304.***

Section 43. KRS 342.823 is amended to read as follows:

(1) In determining the solvency of the authority in regard to maintaining adequate reserves, the commissioner of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities ***except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners***[~~by the amount of future anticipated investment income~~].

(2) The board shall submit an annual independently-audited ***financial statement***[~~report~~] in accordance with procedures governing annual ***statements***[~~reports~~] adopted by the National Association of Insurance Commissioners within ninety (90) days of the close of the business year. The ***statement***[~~report~~] shall be a public record and shall be delivered to the Governor, commissioner of insurance, and the co-chairs of the Legislative Research Commission. It shall indicate the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:

- (a) A summary of the prior quarterly reports required in KRS 342.821;
- (b) An actuarial projection of solvency status for at least ten (10) years in the future; and

(c) Any recommendations pertaining to the same.

(3) If ***at any time*** the assets of the authority[~~ at any time~~] are less than its liabilities, the board ***may***[~~shall~~] levy an assessment on its policyholders***. The board may***[~~ and~~] enforce payment of the assessment in the manner provided in Subtitle 24 of KRS Chapter 304.

Section 44. KRS 342.841 is amended to read as follows:

The ***board***[~~authority~~] shall comply with KRS Chapter 61 in regard to open meetings and the conduct of ordinary business, except that proceedings which would provide an unfair competitive advantage to private sector competitors providing workers' compensation coverage in the Commonwealth may be closed to the public. ***The authority shall act as any other domestic mutual insurance company with regard to all of its records. Any request for records shall be in writing. Any records requested shall be in pursuit of the investigation and the confidentiality of the information in the records shall be maintained.***

SECTION 45. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of any other law notwithstanding, the Governor shall include in the budget recommendation for the executive branch and in the draft branch budget bill for the executive branch submitted to each regular session of the General Assembly for the biennium period beginning July 1, 1998, and for each biennium thereafter, recommendations for appropriations as provided in subsection (1)(c) of Section 4 of this Act to be made by the General Assembly to the benefit reserve fund within the Workers' Compensation Funding Commission established by KRS Chapter 342.

(2) The amount to be recommended for appropriation to the benefit reserve fund within the Workers' Compensation Funding Commission shall be nineteen million dollars ($19,000,000) of the coal severance tax, levied under KRS 143.020, estimate for each fiscal year of the biennium.

Section 46. 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section I. Labor, at pages 1901 and 1902, is amended to read as follows:

I. LABOR

59. LABOR CABINET

a. General Administration and Support

		1996-97	1997-98
General Fund		485,900	503,800
Restricted Funds		***3,612,900***	***3,691,700***
[~~Restricted Funds~~		~~3,556,700~~	~~3,607,000~~]
Total		***4,098,800***	***4,195,500***
[~~Total~~	~~4,042,600~~	~~4,110,800~~]	

b. Workplace Standards

		1996-97	1997-98
General Fund		1,660,700	1,730,600
Restricted Funds		***182,090,200***	***203,824,400***
[~~Restricted Funds~~		~~177,871,200~~	~~195,454,900~~]
Federal Funds		2,419,700	2,303,100
Total		***186,170,600***	***207,858,100***
[~~Total~~	~~181,951,600~~	~~199,488,600~~]	

c. Workers Claims

	1996-97	1997-98
Restricted Funds	***12,180,000***	***15,273,700***
[~~Restricted Funds~~	~~10,159,800~~	~~10,614,200~~]

d. Kentucky Occupational Safety and Health Review Commission

	1996-97	1997-98
Restricted Funds	272,700	293,600
Federal Funds	169,700	161,200
Total	442,400	454,800

TOTAL - LABOR CABINET

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***198,155,800***	***223,083,400***
~~[Restricted Funds~~	~~191,860,400~~	~~209,969,700]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***202,891,800***	***227,782,100***
~~[TOTAL~~	~~196,596,400~~	~~214,668,400]~~

60. KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION

	1996-97	1997-98
Restricted Funds	***202,665,200***	***227,588,900***
~~[Restricted Funds~~	~~196,369,800~~	~~214,475,200]~~

TOTAL - LABOR

	1996-97	1997-98
General Fund	2,146,600	2,234,400
Restricted Funds	***400,821,000***	***450,672,300***
~~[Restricted Funds~~	~~388,230,200~~	~~424,444,900]~~
Federal Funds	2,589,400	2,464,300
TOTAL	***405,557,000***	***455,371,000***
~~[TOTAL~~	~~392,966,200~~	~~429,143,600]~~

The credit provided for in subsection (1)(c) of Section 4 of this Act shall be made prior to the transfer to the Local Government Economic Assistance Fund required by 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operations, Item 12. Special Funds at pages 1876 and 1877, and notwithstanding KRS 42.4582. The appropriations to the Local Government Economic Assistance Fund and the Local Government Economic Development Fund contained in 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section A. Government Operation, Item 12. Special Funds, shall be adjusted accordingly. This Section of this Act prevails over any conflicting provision of 1996 Kentucky Acts Chapter 382, the 1996-98 State/Executive Branch Budget Memorandum.

Section 47. KRS 342.990 is amended to read as follows:

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

   (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

   (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

   (c) Any person who violates KRS 342.020(9), 342.035(2), KRS 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation.

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District and Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred[~~ and~~] eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Except as provided in paragraph (d) of this subsection, a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a misdemeanor where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300), and shall be punished for each offense by:

1. Imprisonment for not more than one (1) year;

2. A fine of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. or 2. of this paragraph.

(d) Where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three

hundred dollars ($300), a person convicted of a violation of KRS 342.335(1) or (2) shall be guilty of a felony and shall be punished for each offense by:

1. Imprisonment for not less than one (1) year nor more than five (5) years;

2. A fine of not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violations, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(e) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in Section 36 of this Act for the purpose of depriving one or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium, shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.

(f) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner, in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer, in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any arbitrator, administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

SECTION 48. A NEW SECTION OF SUBTITLE 13 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) Within sixty (60) days of the effective date of this Act, the licensed workers' compensation advisory organizations shall file with the commissioner an estimate of changes in prospective workers' compensation losses attributable to any net savings under this Act. Within sixty (60) days of receipt of the workers' compensation filing, the commissioner shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.

(2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under this Act for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the commissioner as provided in KRS 304.13-051(2).

(3) Unless the commissioner enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).

(4) Notwithstanding the provisions of KRS 304.13-051 to the contrary after December 31, 1998, no insurer providing workers' compensation insurance shall place into effect any rates, manuals, or underwriting rules for workers' compensation insurance which it proposes to use pursuant to subsections (1) or (4) of KRS 304.13-051 if the rates, manuals, or underwriting rules will result in an increase or decrease of more than fifteen percent (15%) from the workers' compensation insurer's then-existing workers' compensation insurance rates for any classification of risks within a twelve (12) month period of time.

(5) After December 31, 1998, any workers' compensation insurer which proposes to change its then-existing rates, manuals, or underwriting rules so as to effectively increase or decrease the rates of any classification of risks more than fifteen percent (15%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the commissioner pursuant to the provisions of KRS 304.13-051.

SECTION 49. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

(1) Each employer subject to KRS Chapter 342 shall file annually with the Revenue Cabinet, in accordance with administrative regulations, a report providing the policy number and the name and address of the employer's workers' compensation insurance carrier.

(2) The report may be made available to other state agencies notwithstanding the confidentiality provisions of KRS

131.190.

Section 50. KRS 304.13-161 is amended to read as follows:

(1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.

(2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the commissioner for further review of the application of the rating system. The commissioner shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The commissioner may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.

(3) For workers' compensation coverage, each insurer or agent shall notify in writing each insured at the time a workers' compensation insurance policy is issued, or renewed on or after May 1, 1997, of the insured's rights afforded by this section. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in the manner and format prescribed through administrative regulations promulgated by the commissioner.

Section 51. KRS 304.13-415 is amended to read as follows:

(1) Every employer ***that***[~~, or its designated agent, which~~] is assigned an experience modification factor for workers' compensation in order to determine its workers compensation premium shall be furnished[~~ upon request~~] without charge a complete copy of the data and calculations of the experience modification by the insurance company or any entity to which the insurance company may delegate the duty of calculating and promulgating the experience modification or, if applicable, by any self-insurance group of which the employer is a member.

(2) Experience modification shall be based upon all payrolls and claims experience for the applicable period regardless of whether the employer was insured by an insurance company, was a member of a self-insurance group, or was a member of the Kentucky Workers' Compensation Assigned Risk Plan for part or all of the period.

(3) For each workers' compensation insurance policy issued or renewed on or after May 1, 1997, the workers' compensation insurer or the licensed advisory organization shall provide, in accordance with subsection (1) of this section, the policyholder with a written explanation of the policyholder's experience modification factor and the data and methodology utilized in the calculation of the factor.

(4) The commissioner shall promulgate administrative regulations to establish the guidelines for application of the experience modification factors.

Section 52. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the ***arbitrator or*** administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The commissioner shall promulgate administrative regulations prescribing the format and content of written medical reports.

Section 53. KRS 342.040 is amended to read as follows:

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid except that if the ***arbitrator or*** administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate, or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

(2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the ***arbitrator or*** administrative law judge determines that the denial or delay was without reasonable foundation. No part of

the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.

(3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the ***arbitrator or*** administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.

(4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his last known address.

Section 54. KRS 342.090 is amended to read as follows:

Payment of death benefits in good faith, to a supposed dependent or to a dependent subsequent in right to another or other dependents shall protect and discharge the employer and insurer unless and until the lawful dependent or dependents prior in right have given the employer or insurer written notice of his or their claim. In case the employer or insurer is in doubt as to who are dependents or as to their respective rights, the ***arbitrator or*** administrative law judge shall, on application, decide and direct to whom payment shall be made, and payment made under such direction shall release the employer and insurer from all liability. If an appeal is taken from the order of the ***arbitrator or*** administrative law judge directing payment, persons receiving payment under such order shall furnish bond for the protection of adverse claimants pending the outcome of the proceedings.

Section 55. KRS 342.160 is amended to read as follows:

(1) The benefits in case of death shall be paid to one (1) or more dependents of the deceased employee for the benefit of all the dependents entitled thereto, as determined by the ***arbitrator or*** administrative law judge. The dependents to whom payments are made shall apply the same to the use of the persons entitled thereto under this chapter, according to their respective claims on the deceased for support. The compensation of a mentally disabled person shall be paid to his guardian or conservator.

(2) If the dependents are a widow, widower or other head of a family of minor children and one (1) or more minor children, it shall be sufficient for the widow, widower or head of the family to make application for compensation on behalf of all. Where the dependents are mentally incapacitated or are minors the head of whose family is not a dependent, the application may be made by the guardian, conservator or next friend of such dependents.

Section 56. KRS 342.205 is amended to read as follows:

(1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the ***arbitrator or*** administrative law judge, shall submit himself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.

(2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.

(3) If an employee refuses to submit himself to or in any way obstructs the examination, his right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

(4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the ***arbitrator or*** administrative law judge may require.

(5) The department shall supply forms for the report.

Section 57. KRS 342.240 is amended to read as follows:

The department shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The commissioner shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the ***arbitrators and*** administrative law judges, on which shall be inserted the words "Department of Workers' Claims, State of Kentucky, official seal." The board***, the arbitrators,*** and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the commissioner, all actions or proceedings against the board or a member in his official capacity, or against an ***arbitrator or*** administrative law judge or the commissioner in his official capacity shall be brought in the courts of Franklin County.

Section 58. KRS 342.245 is amended to read as follows:

All proceedings of the board***, arbitrators,*** and the administrative law judges shall be recorded in books kept for that purpose by the commissioner, which shall constitute a public record and shall contain an entry of each case, claim or proceeding considered, heard or passed upon by each ***arbitrator,*** administrative law judge and the board, with the award, finding or decisions made thereon.

Section 59. KRS 342.260 is amended to read as follows:

(1) The commissioner shall prepare administrative regulations as he considers necessary to carry on the work of the department and the work of the ***arbitrators and*** administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.

(2) The commissioner shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The commissioner may adopt life tables published by the U.S. Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the commissioner. The life tables designated by the commissioner through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an ***arbitrator or*** administrative law judge shall apply to computations concerning that opinion, award, or settlement.

(3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any ***arbitrator or*** administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.

(4) The sheriff shall serve all subpoenas of the board***, arbitrators,*** and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any ***arbitrator or*** administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.

(5) The Circuit Court shall, on application of the board, any member thereof, or any ***arbitrator or*** administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

Section 60. KRS 342.305 is amended to read as follows:

Any party in interest may file in the Circuit Court of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the ***arbitrator or*** administrative law judge***,*** or of an order or decision of the ***arbitrator,*** administrative law judge***,*** or board, or of an award of the ***arbitrator or*** administrative law judge unappealed from, or of an award of the board rendered upon an appeal whether or not there is a motion to reopen or review pending under KRS 342.125. The court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though it had been rendered in a suit duly heard and determined by that court. Any such judgment, unappealed from or affirmed on appeal or modified in obedience to the mandate of the Court of Appeals shall be modified to conform to any decision of the ***arbitrator or*** administrative law judge ending, diminishing, or increasing any weekly payment under the provisions of KRS 342.125 upon a presentation to it of a certified copy of such decision.

Section 61. KRS 342.310 is amended to read as follows:

(1) If any ***arbitrator,*** administrative law judge, the board***,*** or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings which shall include actual expenses but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorney fees, and all other out-of-pocket expenses upon the party who has so brought, prosecuted, or defended them.

(2) If any ***arbitrator,*** administrative law judge, the board, or any court before whom any proceedings are brought under this chapter determines that a party has committed acts in violation of KRS 342.335(1) or (2), that party may be ordered to make restitution for any compensation paid as a result of the commission of such acts.

Section 62. KRS 342.325 is amended to read as follows:

All questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the ***arbitrator or*** administrative law judge, shall be determined by the ***arbitrator or*** administrative law judge except as otherwise provided in this chapter.

Section 63. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the commissioner shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each

arbitrator and administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the commissioner deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the commissioner to publish and distribute among employers and employees any general information as to the business transacted by the department as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the department shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

Section 64. KRS 342.700 is amended to read as follows:

(1) Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).

(2) A principal contractor, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any one (1) of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who pays the compensation may recover the amount paid from any subordinate contractor through whom he has been rendered liable under this section. Every claim to compensation under this subsection shall in the first instance be presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal or intermediate contractor nor shall the claim be barred by limitations, if the claim is filed against the principal or intermediate contractor within one (1) year after a final unappealed order has been rendered by an ***arbitrator or*** administrative law judge determining that immediate employer has insufficient security to pay the full and maximum benefits that could be determined to be due him under this chapter. The collection of full compensation from one employer shall bar recovery by the employee against any other. But he shall not collect from all a total compensation in excess of the amount for which his immediate employer is liable. This subsection shall apply only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are under his control otherwise or management.

(3) It shall be considered to be contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies granted by this section as a condition of receiving a contract or purchase order. Furthermore, in selecting between two (2) or more contractors or suppliers, consideration may not be given by an owner or employer to whether one (1) contractor or supplier voluntarily waives its remedies under this section or offers to accept lesser compensation than another contractor or supplier for that waiver of remedies.

Section 65. KRS 342.710 is amended to read as follows:

(1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.

(2) The commissioner shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.

(3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. In all such instances, the ***arbitrator or*** administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The ***arbitrator or*** administrative law judge on his own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, the ***arbitrator or*** administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the ***arbitrator or*** administrative law judge, after hearing and upon a finding, determined by sound medical evidence which

indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

(4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.

(5) Refusal to accept rehabilitation pursuant to an order of an ***arbitrator or*** administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

(6) The commissioner shall cooperate on a reciprocal basis with the Department of Vocational Rehabilitation and the Department for Employment Services of the Kentucky Cabinet for Workforce Development. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Department of Vocational Rehabilitation or Department for Employment Services following the refusal by the employer or his insurance carrier to provide such services, the ***arbitrator or*** administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or his insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.

(7) ***An employee who is enrolled and participating in a program of rehabilitation training pursuant to this section may elect to receive an acceleration of benefits as awarded under KRS 342.730. Such acceleration shall be available to the employee during the period of retraining, but in no event shall be paid in a weekly amount greater than sixty-six and two-thirds percent (66-2/3%) of the average weekly wage upon which the award is based, not to exceed one hundred percent (100%) of the state average weekly wage. Upon successful completion of the rehabilitation program, the total of all accelerated benefits paid shall be deducted on a dollar-for-dollar basis, without discount, from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, if any, shall then be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. If a program of rehabilitation training is terminated by the employee prior to completion, all sums paid on an accelerated basis shall be discounted at the rate set forth in KRS 342.265 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, after the discount, shall be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. In no event shall this subsection be construed as requiring payment of benefits in excess of the total of those benefits which would otherwise be payable under the award***~~[Prior to an order from an administrative law judge, the provisions of this section shall not be mandatory]~~.

Section 66. KRS 342.735 is amended to read as follows:

The commissioner shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits. The commissioner may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter. The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an ***arbitrator or*** administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the ***arbitrator or*** administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

Section 67. KRS 342.780 is amended to read as follows:

A claimant may, in the original application for benefits, or any party may, by motion accompanied by proper allegations while the case is still pending, and the ***arbitrator or*** administrative law judge shall, upon his own motion at any time before the rendition of the final award, cause the uninsured employers' fund to be made a party to the proceedings if it should appear that the named defendant has failed to secure the payment of compensation as required by KRS 342.340.

Section 68. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

(1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and

(2) Has not made a deposit of security, indemnity, or bond acceptable to the commissioner to secure the payment of compensation liability; and

(3) Has failed to make payment of compensation according to the terms of that award,

the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the commissioner, and the commissioner shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the ***arbitrator or*** administrative law judge relative to the claim as certified by the commissioner and to state that there is due to plaintiff on account of the opinion, order, or award of the ***arbitrator or*** administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

Section 69. KRS 342.318 is amended to read as follows:

The provisions of KRS 342.316***(4)***[~~(3)~~] shall apply to employees' asbestos-related disease claims filed on or after July 15, 1986.

Section 70. KRS 342.329 is amended to read as follows:

(1) The commissioner shall establish ***a division of***[~~an~~] Ombudsman ***and Workers' Compensation Specialist Services***[~~program~~]. The functions of the ***division***[~~ombudsman~~] shall include:

(a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;

(b) Responding to inquiries and complaints relative to the workers' compensation program;

(c) Advising all parties of their rights and obligations under this chapter;[~~ and~~]

(d) ***Assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and***

(e) Performing other duties as required by the commissioner through administrative regulations promulgated by the commissioner.

(2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.

(3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.

(4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the ***division***[~~ombudsman program~~].

Section 71. KRS 393.082 is amended to read as follows:

(1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.

(2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or commissioner's designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.

(3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.

(4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt

employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.

(5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or commissioner's designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.

(6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.

(7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or commissioner's designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.

(8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.

(9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency or employee, beyond that expressly set forth in a comprehensive distribution plan.

(10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.

(11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.

(12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by[~~ subsection (1) of~~] KRS 342.320, as well as the approval of the commissioner or the commissioner's designee.

(13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

Section 72. KRS 342.155 is amended to read as follows:

Whenever the administrative law judge considers it expedient, any lump sum which is paid as provided in ***this chapter***[~~KRS 342.150 hereof~~] shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties and liabilities of the trustee shall be determined by the general laws of this state.

Section 73. KRS 342.352 is amended to read as follows:

(1) The commissioner may establish one (1) or more[~~ pilot~~] programs for interested employers of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth and may promulgate any administrative regulations necessary to implement the provisions of this subsection. The integrated management of such claims shall in no event affect any benefits, rights, or coverage established pursuant to a workers' compensation insurance policy. Treatment for work-related conditions shall not be subject to either copayments or deductibles. The commissioner shall make a report comparing the results of each[~~ pilot~~] program to the expected results under traditional workers' compensation insurance and traditional workers' compensation with a managed care program. The[~~ pilot~~] program shall serve as a tentative model for future experiments.

(2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the commissioner, in consultation with the commissioner of the Department of Insurance.

(3) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the commissioner of

the Department of Insurance.

(4) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under this chapter, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by this chapter.

(5) The participants in a[~~ pilot~~] project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the commission.

(6) Each agency of state government shall cooperate with the commissioner if requested to provide information for the purposes of this section.

SECTION 74. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The General Assembly finds and declares that the awards of workers' compensation benefits for coal workers' pneumoconiosis (black lung) have placed a substantial financial burden on all employers of the Commonwealth through the special fund assessments imposed on all employers to cover the liabilities of the special fund.

(2) The General Assembly finds and declares that the purpose of creating the Kentucky Coal Workers' Pneumoconiosis Fund in Section 34 of this Act is to assure that liabilities incurred as a result of workers' compensation awards for coal workers' pneumoconiosis with dates of last exposure after the effective date of this Act shall be the financial responsibility of employers engaged in severance and processing of coal.

(3) Therefore, it is the intent of the General Assembly in imposing the assessments required in paragraphs (a) and (b) of subsection (4) of Section 34 of this Act to assure that liabilities incurred as a result of workers' compensation awards for coal workers' pneumoconiosis with dates of last exposure after the effective date of this Act shall be the financial responsibility of employers engaged in the severance and processing of coal.

Section 75. KRS 42.4582 is amended to read as follows:

(1) There is hereby established in the State Treasury a fund entitled "Local Government Economic Development Fund." The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallotted or unencumbered balances in the fund shall be invested as provided for in KRS 42.500(9). Income earned from the investments shall be prorated for grants to counties according to the allotment schedule set out in KRS 42.4592.

(2) Moneys shall be transferred from the general fund into this fund according to the following schedule:

(a) Effective July 1, 1992, an amount equal to fifteen percent (15%) of the severance and processing taxes on coal collected annually;

(b) Effective July 1, 1993, an amount equal to eighteen percent (18%) of the severance and processing taxes on coal collected annually;

(c) Effective July 1, 1994, an amount equal to twenty-five percent (25%) of the severance and processing taxes on coal collected annually; and

(d) Effective July 1, 1995, ***and thereafter,*** an amount equal to fifty percent (50%) of the severance and processing taxes on coal collected annually ***unless otherwise amended by the budget bill.***

The transfers shall be made quarterly, based upon the revenue estimates prevailing at the time each quarterly transfer is due, except that the last quarterly transfer shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual transfer required by this subsection. ***The quarterly calculation and transfer of funds pursuant to subsection (2)(d) of this section shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission as required by KRS 342.122.***

Section 76. KRS 42.4585 is amended to read as follows:

(1) A portion of each quarterly transfer of moneys provided for in KRS 42.4582 shall be transferred from the local government economic development fund into the local government economic assistance fund according to the following schedule:

(a) Effective July 1, 1992, an amount equal to eighty percent (80%) of each quarterly transfer;

(b) Effective July 1, 1993, an amount equal to sixty-six and seven-tenths percent (66.7%) of each quarterly transfer;

(c) Effective July 1, 1994, an amount equal to forty-eight percent (48%) of each quarterly transfer; and

(d) Effective July 1, 1995, ***and thereafter,*** an amount equal to twenty-four percent (24%) of each quarterly transfer.

The transfers shall be made quarterly.

(2) The amount transferred annually from the local government economic development fund into the local government

economic assistance fund under the provisions of subsection (1) of this section shall not be less than an amount equal to ***thirteen percent (13%)***~~[twelve percent (12%)]~~ of the severance and processing taxes on coal collected annually.

(3) The quarterly calculation and transfer of funds pursuant to subsections (1) and (2) of this section shall be made only after the quarterly installment of the annual nineteen million dollars ($19,000,000) allocation of coal severance tax revenues has been credited to the benefit reserve fund within the Workers' Compensation Funding Commission as required by KRS 342.122.

SECTION 77. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) The board of directors of the following funds shall make quarterly reports according to generally-accepted accounting principles of all money received and disbursed by the listed funds during each quarter to the Legislative Research Commission. The funds which shall be reported are:

(a) Kentucky individual self-insurance guaranty fund;

(b) Kentucky group self-insurance fund; and

(c) Kentucky coal employers self-insurance fund.

(2) The director of the Division of the Kentucky Coal Workers' Pneumoconiosis Fund shall make quarterly reports according to generally-accepted accounting principles of all money received and disbursed by the fund during each quarter to the Legislative Research Commission.

(3) The Department of Workers' Claims shall make quarterly reports to the Legislative Research Commission on the status of the provisions of this chapter.

Section 78. KRS 342.680 is amended to read as follows:

In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify as confirmed by competent medical evidence and where there is unrebutted prima facie evidence that indicates that the injury was work related, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury was work related, that sufficient notice of the injury has been given, and that the injury or death was not proximately caused by the employee's intoxication or by his willful intention to injure or kill himself or another.

SECTION 79. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

(1) If an insurance carrier, self-insurance group, or self-insured employer providing workers' compensation coverage engages in claims settlement practices in violation of this chapter, the commissioner of the Department of Workers' Claims may fine the insurance company, self-insurance group, or self-insured employer the sum of one thousand dollars ($1,000) to five thousand dollars ($5,000) for each violation and if they have a pattern of violations, the commissioner may revoke the certificate of self-insurance or request the commissioner of insurance to revoke the certificate of authority of the insurance carrier.

(2) This section does not create a private cause of action but instead is to be used by the commissioner to prevent unfair claims settlement practices. Penalties imposed by this section shall be paid directly to the injured worker.

Section 80. KRS 342.650 is amended to read as follows:

The following employees are exempt from the coverage of this chapter:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in domestic servant employment.

(2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his trade, business or profession.

(3) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(4) Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969, or as amended.

(5) Any person employed in agriculture.

(6) Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the commissioner.

(7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment.

(8) Members of a religious sect or division that is an adherent of established tenets or teachings by reason of which members are conscientiously opposed to acceptance of the benefits of any public or private insurance which makes

payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the Federal Social Security Act, 42 U.S.C. sec. 301 et seq., and it is the practice, and has been for ten (10) or more years, for members of the sect or division to make reasonable provision for their dependent members.

Section 81. The following KRS sections are repealed:

342.1201 Findings and declarations relating to special fund assessments.

342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart -- Limit on special fund's liability for all other injury claims.

342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician -- Report -- Fees and expenses -- Decision of administrative law judge.

342.150 Lump-sum compensation -- When and how made.

342.720 Burial expense.

Section 82. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 83. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

Subsequent administrative savings as a result of the implementation of this Act shall be used to defray the special fund assessment on all employers in the Commonwealth.

Section 84. The General Assembly finds and declares that workers who incur injuries covered by KRS Chapter 342 are not assured that prescribed benefits will be promptly delivered, mechanisms designed to establish the long-term solvency of the special fund have failed to reduce its unfunded liability, and many of the Commonwealth's employers are placed at a competitive disadvantage due to the cost of securing workers' compensation insurance coverage. These circumstances threaten the vitality of the Commonwealth's economy and the jobs and well-being of its workforce. Whereas it is in the interest of all citizens that the provisions of this Act shall be implemented as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The Senate Floor Amendment No. 35 to the Senate Committee Substitute to **HB 1** is as follows:

On page 37, line 10, delete the number "*1998*" and insert the number "*2000,*" in lieu thereof; and

On page 37, line 11, delete the number "*1998,*" and insert the number "*2000,*" in lieu thereof; and

On page 45, line 2, after the word "application" by inserting "*for resolution of claim*"; and

On page 45, lines 2 and 3, by inserting a beginning bracket before the word "to" on line 2, and a closing bracket after the word "thereon" on line 3 and striking through the intervening language; and

On page 45, line 11, after "(2)" insert the following: "*Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the commissioner shall issue notice of the filing to all parties and shall promptly assign the claim to an arbitrator for benefit review. The arbitrator shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the commissioner. Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim*"; and

On page 45, line 11, after "(2)" by placing a beginning bracket before "Except" and striking through all language on that line; and

On page 45, by striking through all language on lines 12 through 15; and

On page 45, by striking through all language except "." on line 16 and placing a closing bracket after the word "conference"; and

On page 45, line 17, after "(3)" by inserting the following:

"*(a) The arbitrator shall conduct proceedings as necessary to the resolution of the claim and may order the parties to appear for a benefit review conference, or submit medical reports and other information, or refer the employee for medical evaluation.*

(b) If an arbitrator determines in his discretion that a pending claim presents factual issues best resolved through hearing before an administrative law judge, the arbitrator may enter an order transferring the claim to an administrative law judge for further proceedings"; and

On page 45, line 17, after "(3)" by placing a beginning bracket before "The" and striking through all language on that line; and

On page 45, by striking through all language on lines 18 through 26; and

On page 45, line 27, by striking through all language and placing a closing bracket after "record"; and

On page 46, line 1, after "(4)", by inserting the following: "***Except where compelling circumstances justify delay and except as provided in subsection (3)(b) of this section, the arbitrator shall render a written determination upon all matters at issue within ninety (90) days of the assignment of the claim. Through written order, the arbitrator may grant or deny any benefit afforded by this chapter, including interlocutory relief***"; and

On page 46, line 1, after "(4)" by placing a beginning bracket before "If" and striking through all language on that line; and

On page 46, by striking through all language on lines 2 and 3; and

On page 46, line 4, by striking through all language except "." and placing a closing bracket after "exclusive"; and

On page 46, line 5, after "(5)" by inserting the following: "***Unless timely appeal is filed as set forth in KRS 342.275, the written determination of the arbitrator shall be a final order enforceable under the provisions of KRS 342.305***"; and

On page 46, line 5, after "(5)" by placing a beginning bracket before "An" and striking through all language on that line; and

On page 46, by striking through all language on lines 6 through 8; and

On page 46, line 9, by striking through all language except "." and placing a closing bracket after "delay"; and

On page 46, after line 9, by inserting the following:

"***(6) Benefit review conferences shall be held at a place designated by the commissioner, provided that the proceedings shall be held within the boundaries of the Commonwealth.***

(7) Within one hundred twenty (120) days of the effective date of this Act, the commissioner shall promulgate administrative regulations establishing procedures for the resolution of claims, which shall include benefit review. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims."; and

On page 65, line 27, after the word "civil" insert "***fines***" and place brackets around and strike through "or criminal penalties, or both,"; and

On page 66, line 6, place a beginning bracket before "(3)" and strike through all language on that line; and

On page 66, strike through language on line 7; and

On page 66, line 8, strike through "Department of Insurance" and remove the opening bracket before "or"; and

On page 109, line 26, by deleting "***12,180,000***" and by inserting "***12,137,900***", and by deleting "***15,273,700***" and by inserting "***15,182,500***"; and

On page 110, line 9, by deleting "***198,155,800***" and by inserting "***198,113,700***", and by deleting "***223,083,400***" and by inserting "***222,992,200***"; and

On page 110, line 12, by deleting "***202,891,800***" and by inserting "***202,849,700***", and by deleting "***227,782,100***" and inserting "***227,690,900***"; and

On page 110, line 16, by deleting "***202,665,200***" and by inserting "***202,623,100***", and by deleting "***227,588,900***" and by inserting "***227,497,700***"; and

On page 110, line 21, by deleting "***400,821,000***" and by inserting "***400,736,800***", and by deleting "***450,672,300***" and by inserting "***450,489,900***", and

On page 110, line 24, by deleting "***405,557,000***" and by inserting "***405,472,800***", and by deleting "***455,371,000***" and by inserting "***455,188,600***", and

On page 111, after line 8 and before line 9, by inserting a new section that reads as follows:

"Section 47. 1996 Kentucky Acts Chapter 380, Part I, Operating Budget; Section L. Public Protection and Regulation Cabinet, Item 72, Insurance, at pages 1904 to 1906, is amended to read as follows:

72. INSURANCE

	1996-97	1997-98
Restricted Funds	***11,122,600***	***11,484,600***
~~[Restricted Funds~~	~~10,990,100~~	~~11,219,600~~]

Included in the above appropriation is a transfer of $2,500,000 each year of the biennium to the General Fund Surplus Account, notwithstanding KRS 304.2-400(3).

The Restricted Funds totals for the Public Protection and Regulation Cabinet shall be adjusted by increasing the Restricted Funds $132,500 in fiscal year 1996-97 and by $265,000 in fiscal year 1997-98 and by adjusting the Cabinet totals

accordingly. This section of this Act prevails over any conflicting provision of 1996 Kentucky Acts Chapter 382, the 1996-98 State/Executive Branch Budget Memorandum."; and renumber remaining sections accordingly; and

On page 115, line 2, remove all new language after "***(c)***"; and

On page 115, delete lines 3 through 25 in their entirety; and

On page 115, line 26, delete "***(e)***"; and

On page 116, line 9, delete "***(f)***" and insert in lieu thereof "***(d)***"; and

On page 142, line 15, delete "***Penalties***"; and

On page 142, delete line 16 in its entirety; and

On page 143, after line 21, by inserting a new section and by renumbering remaining sections accordingly:

"SECTION 81. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

The substantive provisions of this Act shall apply to any claim arising from an injury or last exposure to the hazards of an occupational disease occurring on or after the effective date of this Act. Procedural provisions of this Act shall apply to all claims irrespective of the date of injury or last exposure, including, but not exclusively, the mechanisms by which claims are decided and workers are referred for medical evaluations. The provisions of KRS 342.120(3), 342.125(8), 342.213(2)(e), 342.265, 342.270(7), 342.320, 342.610(3), 342.760(4), and 342.990(11) are remedial."; and

On page 144, after line 12 and before line 13, insert the following and by renumbering remaining sections accordingly:

"Section 84. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

(1) "Insurer" means any person, entity, or organization, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the Department of Insurance under this chapter***, and any "carrier," "self-insurer" or "insurance carrier" as defined by KRS Chapter 342***.

(2) "Insurance policy" or "policy" means any individual or group policy***, including those defined by KRS Chapter 342,*** certificate, or contract of an insurer as defined in subsection (1) of this section affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.

(3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself to be an insured or beneficiary.

(4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.

(5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense.

Section 85. KRS 304.47-020 is amended to read as follows:

(1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims,***Special Fund,*** or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, ***or from a "self-insurer" as defined by KRS Chapter 342,*** knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any written or oral statement as part of, or in support of, an application for an insurance policy, knowing that this statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;

(c) Assists, abets, solicits, or conspires with another to prepare or make any written or oral statement that is intended to be presented to any insurer, person, entity, or organization in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy ***or from a "self-insurer" as defined by KRS Chapter 342,*** knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(g) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer; ~~[or]~~

(h) Engages in unauthorized insurance, as defined in KRS 304.11-030***; or***

(i) Knowingly and with intent to defraud or deceive, receives temporary total disability benefits while being employed in work as defined in KRS 342.0011.

(2) (a) Except as provided in paragraph (b) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars ($300), and shall be punished by:

1. Imprisonment for not more than one (1) year;

2. A fine, per occurrence, of not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph;

(b) Where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars ($300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:

1. Imprisonment for not less than one (1) nor more than five (5) years;

2. A fine, per occurrence, of not more than ten thousand dollars ($10,000) per individual nor one hundred thousand dollars ($100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.

(c) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a) or (b) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss under the person's actions which resulted in the adjudication of guilt. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

(3) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

Section 86. KRS 304.47-050 is amended to read as follows:

(1) Any person, other than an insurer, agent, or other person licensed under this chapter, or an employee thereof, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the Insurance Fraud Unit a report of information pertinent to this knowledge of or belief and any additional relevant information the commissioner may request.

(2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the Insurance Fraud Unit a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or his employees or agents may require:

(a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;

(b) Any utilization review of benefits committee as defined in KRS 211.462 to 211.466;

(c) Any private medical review committee;

(d) Any insurer, agent, or other person licensed under this chapter; and

(e) Any employee of the persons named in paragraphs (a) to (d) of this subsection.

(3) The Insurance Fraud Unit or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the unit, may require further investigation. The unit shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.

(4) ***The Department of Workers' Claims shall provide the Insurance Fraud Unit access to all relevant information the commissioner may request.***

(5) The Insurance Fraud Unit shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the unit of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the commissioner may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

(6)[~~(5)~~] Notwithstanding the provisions of subsections (1) to (4) of this section, when an insurer or an insured knows or has reasonable grounds to believe that a person committed a fraudulent insurance act which the insurer reasonably believes not to have been reported to a law enforcement agency in this state, then, for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf or the insured may notify a law enforcement agency of their knowledge or reasonable belief and provide information relevant to the fraudulent insurance act, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss.

(7)[~~(6)~~] If the information referred to in subsection (5) of this section is specifically requested by a law enforcement agency or prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.

(8)[~~(7)~~] In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, ***the Department of Workers' Claims,*** their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

Section 87. KRS 304.47-060 is amended to read as follows:

(1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the Insurance Fraud Unit or its authorized representative. No civil cause of action of any nature shall arise against the person:

  (a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;

  (b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle; [~~or~~]

  (c) ***For any information furnished to or received from the Department of Workers' Claims, its agents or employees; or***

  (d) For any information furnished in reports to the commissioner or the National Association of Insurance Commissioners.

(2) The commissioner or any employee or agent of the Department of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the commissioner or the Insurance Fraud Unit or by virtue of the publication of any report or bulletin related to the official activities or duties of the commissioner.

(3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

(4) The papers, documents, reports, or evidence relative to the subject of an investigation under this subtitle shall not be subject to public inspection for so long as the commissioner deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, the papers, documents, reports, or evidence relative to the investigations shall not be subject to subpoena until opened for public inspection by the commissioner, unless the commissioner consents, or until, after notice to the commissioner and a hearing, a court of competent jurisdiction determines the commissioner would not be unnecessarily hindered by a subpoena. The commissioner or his employees or agents shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to pending investigations of fraudulent insurance acts."; and by

renumbering the remaining sections accordingly.

The Senate Floor Amendment No. 28 to the Senate Committee Substitute to **HB 1** is as follows:

On page 75, line 15, before the word "intoxication", by inserting "***voluntary***"; and

On page 75, line 15, after the word "intoxication,", by inserting "***as defined in KRS 501.010,***"; and

On page 75, lines 15 and 16, by deleting the new language.

The Senate Floor Amendment No. 29 to the Senate Committee Substitute to **HB 1** is as follows:

On page 26, line 4, after "***injury***", by inserting "***or a third degree burn injury covering ten percent (10%) or more of the body, if the worsening condition of the burn injury is substantiated by objective medical evidence.***".

The Senate Floor Amendment No. 32 to the Senate Committee Substitute to **HB 1** is as follows:

On page 142, line 6, by deleting "***(1)***";

On page 142, line 8, after "***chapter,***" by inserting "***or the provisions of KRS 304.12-230,***";

On page 142, line 8, after "***Claims***", by inserting "***shall***";

On page 142, line 9, by deleting "***may***"; and

On page 142, lines 14 and 15, by deleting "***(2) This section does not create a private cause of action but instead is to be used by the commissioner to prevent unfair claims settlement practices.***".

The Senate Floor Amendment No. 24 to the Senate Committee Substitute to **HB 1** is as follows:

On page 143, between lines 21 and 22, by inserting the following:

"Section 81. KRS 342.035 is amended to read as follows:

(1) Periodically, the commissioner shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the commissioner may also consider the increased security of payment afforded by this chapter***, and shall assure that the fees for primary care physicians adequately reimburse the physician for costs and overhead, and are at a rate to discourage procedures or services normally performed by a primary care physician from being performed in an emergency room setting.*** On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the commissioner shall execute a contract with an appropriately-qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the commissioner not later than sixty (60) days following execution of the contract. The commissioner shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.

(2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.

(3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.

(4) The commissioner shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and

medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the commissioner, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.

(5) (a) To ensure compliance with subsections (1) and (4) of this section, the commissioner shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, group self-insurer, and self-insured employer to certify to the commissioner the program or plan it has adopted to ensure compliance.

(b) In addition, the commissioner shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the commissioner, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the commissioner to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the commissioner, and shall use the information for no other purpose than the audit required by this paragraph.

(c) The commissioner shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer, or self-insured employer pursuant to this chapter.

(d) Periodically, or upon request, the commissioner shall report to the Interim Joint Committee on Labor and Industry of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.

(e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.

(6) The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.

(7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents ($0.50) per page. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.

(8) (a) The commissioner shall develop or adopt practice parameters or guidelines for clinical practice for use by medical providers under this chapter. The commissioner may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the commissioner may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the commissioner, with periodic updating based on data collected during the application of the parameters.

(b) Any provider of medical services under this chapter who has followed the practice parameters or guidelines developed or adopted pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.

On page 143, line 22, after "Section" by deleting "81" and inserting "82" in lieu thereof;

On page 144, line 5, after "Section" by deleting "82" and inserting "83" in lieu thereof;

On page 144, line 9, after "SECTION" by deleting "83" and inserting "84" in lieu thereof; and

On page 144, line 13, after "Section" by deleting "84" and inserting "85" in lieu thereof.

Representative Moberly moved that the House concur in the Senate Committee Substitute to **HB 1**. Agreed.

Representative Moberly moved that the House concur in Senate Floor Amendment No. 35 to the Senate Committee Substitute to **HB 1**. Agreed.

Representative Moberly moved that the House concur in Senate Floor Amendment No. 28 to the Senate Committee Substitute to **HB 1**. Agreed.

Representative Moberly moved that the House concur in Senate Floor Amendment No. 29 to the Senate Committee Substitute to **HB 1**. Agreed.

Representative Moberly moved that the House concur in Senate Floor Amendment No. 32 to the Senate Committee

Substitute to **HB 1**. Agreed.

Representative Moberly moved that the House refuse to concur in Senate Floor Amendment No. 24 to the Senate Committee Substitute to **HB 1**. Agreed.

Representative Stumbo moved the adoption of the following **SCR 13**:

SCR 13, A CONCURRENT RESOLUTION adjourning the 1996 Extraordinary Session of the General Assembly sine die.

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. When the Senate and the House of Representatives adjourn on Thursday, December 12, 1996, they do adjourn sine die.

There being no objection **SCR 13** was adopted.

Representative Heleringer moved that the rules be suspended to act upon a Legislative Citation. Agreed.

Representative Heleringer moved the adoption of the following **Legislative Citation No. 21**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes and honors Representative Jon Ackerson on the occasion of the last day of his distinguished career of twenty-one years in the Kentucky Legislature. The entire membership joins with Representative Bob Heleringer in extending its very best wishes to this dedicated colleague who while in the Legislature served with distinction in the Senate for eight years, contributed greatly as a member of Senate Leadership, and masterfully served the constituents of the 47th District as a Representative. He will long be remembered for his sponsorship and enactment of Senate Bill 275, which greatly expanded the rights of families with mentally retarded children. This prestigious body salutes this phenomenal gentleman and extends best wishes for a successful and productive retirement. **Legislative Citation No. 21** was adopted without objection.

Representative Adams moved the adoption of the following **Legislative Citation No. 36**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Dean House for his brief but dedicated service to the legislative process. Dean House's manner appears unassuming, but this highly regarded colleague could accomplish much. This prestigious body joins Representative Royce Adams in expressing our gratitude to this fine gentleman from Stamping Ground for representing the constituents from the 62nd District with quiet determination. Further, we extend to him our very best wishes for a bright and prosperous future. **Legislative Citation No. 36** was adopted without objection.

Representative Ford moved the adoption of the following **Legislative Citation No. 35**. Agreed.

The House of Representatives of the Commonwealth of Kentucky hereby recognizes Representative Anthony Mello and expresses deep appreciation to the gentleman from Mammoth Cave who arrived in our midst with a strong desire to serve the constituents of the 19th District and who showed keen enthusiasm for the legislative process. This prestigious body joins Representative Danny Ford in expressing our gratitude to said recipient for his contributions and willingness to serve the citizens of this great Commonwealth. Further, we extend to him our best wishes for a successful and productive future. **Legislative Citation No. 35** was adopted without objection.

Representative Stumbo moved that the House stand at ease. Agreed. The Speaker called the House to order.

Senate Message

HB 1 returned with the following message: The Senate has receded from Senate Floor Amendment No. 24 to the Senate Committee Substitute to **HB 1** and is respectfully returning same to this Honorable Body for enrollment. (Time: 6:00 p.m.)

Orders of the Day (Continued)

Representative Moberly moved that **HB 1** by way of Senate Committee Substitute as amended by the Senate, be passed.

On the roll call the vote was: Yeas 75, Nays 18 (See December 12, 1996 roll call on **HB 1** - Appendix)

HB 1, by way of Senate Committee Substitute as amended by the Senate, was passed and the title agreed to.

Representative Moberly moved that the vote by which **HB 1**, by way of Senate Committee Substitute as amended by the Senate, was passed be reconsidered and said motion be placed on the table. Agreed.

Motions, Petitions and Communications

Representative Rapier moved the adoption of the following **HR 7**:

HR 7, A RESOLUTION honoring the Nelson County High School Football Team.

WHEREAS, on December 7, 1996, the Nelson County High School Football Team won the 1996 State AAAA Football Championship, beating out Lexington's Paul Laurence Dunbar High School to bring home the school's first-ever championship title; and

WHEREAS, the Nelson County High School Football Team had an outstanding overall season ending with a 14-and-1 record; and

WHEREAS, not only does Nelson County boast an outstanding team record, but it also boasts a number of individual achievements, including Gabe Stone's seven completions for 76 yards on offense, Anthony Boggs's 21 carries for 208 yards and a 70-yard touchdown run, and Cody Brown's 89-yard kickoff return; and

WHEREAS, not only did the Cardinal football team play an outstanding season, but the Nelson County High School Cheerleaders also put in an outstanding effort to cheer their team to their first state championship; and

WHEREAS, the athletic excellence and achievements reached by the Nelson County High School Football Team are outstanding and are to be recognized and commended throughout the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. This honorable body hereby honors and congratulates the Nelson County High School Football Team for their outstanding athletic achievements, and for the inspiration they provide to the youth of Kentucky.

Section 2. When the House of Representatives adjourns this day, it does so with great enthusiasm in honoring the 1996 Class AAAA State Champions, the Nelson County High School Football Team.

Section 3. The Clerk of the House of Representatives is hereby directed to transmit copies of this Resolution to Principal Brady Link, Coach Mark Brown, and each member of the Nelson County High School Football Team and Cheerleading Squad, in the care of Nelson County High School, 1070 Bloomfield Road, Bardstown, Kentucky 40004.

There being no objection **HR 7** was adopted.

Representative Stumbo moved that no further business be conducted on this day other than receipt of Senate Messages, Engrossing and Enrolling of bills, approval of the Journal and Adjournment. Agreed.

Representative Stumbo moved that when the House does adjourn, it does so by voice vote. Agreed.

Representative Stumbo moved that when the House does adjourn on this day, it do so until January 7, 1997 unless called into Extraordinary Session by the Governor.

Recess

Representative Stumbo moved that the House recess until 7:00 p.m.

At the appointed hour, the Speaker resumed the Chair and called the House to order.

Report On Enrolled Bills

The Committee on Enrollment reported that **HB 1** and **HB 2** have been examined and found correctly enrolled. Said Bills were read at length, compared and signed in open session by the Speaker, and ordered delivered to the Senate. (Time - 7:19 p.m.)

HB 1 and **HB 2** delivered to the Senate and signed by the President. Delivered to the Governor on December 12, at 7:30 p.m.

Representative Stumbo moved that the reading of the Journal of December 12, 1996, be dispensed with and the same approved. Agreed.

Representative Stumbo moved that the Journal of the House of Representatives of the First Extraordinary Session of 1996 be approved.

The Journal of the House of Representatives was read, compared and approved by the House.

Announcements

The following meeting was announced:

Minority Caucus, Room 316, upon recess.

Adjournment

Representative Stumbo moved that the House adjourn sine die until Tuesday, January 7, 1997, unless otherwise called into extraordinary session by the Governor.

The motion that the House adjourn sine die was adopted.

The House adjourned sine die.

APPENDIX A

MEMBERSHIP OF THE HOUSE OF REPRESENTATIVES

1996 FIRST EXTRAORDINARY SESSION

Appendix A - Membership of the House of Representatives
1996 First Extraordinary Session

OFFICERS

SPEAKER	REPRESENTATIVE JODY RICHARDS
SPEAKER PRO TEM	REPRESENTATIVE LARRY CLARK
CHIEF CLERK	EVELYN MARSTON
ASSISTANT CLERK	JULIE WHEAT
ENROLLING CLERK	MARGARET WATTS
SERGEANT AT ARMS	EMMETT A. SLATTERY
CHIEF DOORKEEPER	WILLIAM "BUNNY" DAVIS
CLOAKROOM KEEPER	AUBREY MORRIS
CLOAKROOM KEEPER	FRANK SMITH
JANITOR	GEORGE FRITZ
PAGE	JOHN BROOKS
PAGE	CLARK CASE
PAGE	SHANNON DOLL
PAGE	MARTHA STANY

(Representatives' names are in alphabetical order with party affiliation designated by initial, hometown, counties in district, and number of the representative district.)

ACKERSON, JON W. (R - Louisville) Jefferson, 47
ADAMS, ROYCE W. (D - Dry Ridge) Grant, Henry, Owen, 61
ADKINS, ROCKY (D - Sandy Hook) Boyd, Elliott, Lawrence, 99
ALLEN, WILLARD C. 'WOODY" (R - Morgantown) Butler, Grayson, Hardin, 17
ALTMAN, RAY H. (R - Finley) Adair, Taylor, 51
ARNOLD, ADRIAN (D - Mount Sterling) Lee, Montgomery, Powell, 74
ARNOLD, JOHN, JR. (D - Sturgis) Daviess, Henderson, Union, 7
BALLARD, EDDIE (D - Madisonville) Hopkins, 10
BARROWS, JOSEPH HOWARD (D - Versailles) Fayette, Franklin, Woodford, 56
BAUGH, SHELDON E. (R - Russellville) Logan, Todd, 16
BONDURANT, KAYE (D - Hodgenville) Hardin, 26
BOWLING, MICHAEL DEAN (D - Middlesboro) Bell, Leslie, 87
BRANDSTETTER, LAWRENCE (R - Lexington) Fayette, 79
BROWN, MARK S. (D - Brandenburg) Hardin, Meade, 27
BRUCE, JAMES EDMOND (D - Hopkinsville) Christian, Hopkins, 9
BUIS, JEFFERY (R - Liberty) McCreary, Pulaski, Wayne, 52
BURCH, THOMAS J. (D - Louisville) Jefferson, 30
BUTLER, DENVER (D - Louisville) Jefferson, 38
BUTLER, DWIGHT D. (R - Harned) Breckinridge, Ohio, 18
CALLAHAN, JAMES P. (D - Southgate) Campbell, 67
CAVE, STANTON L. "STAN" (R - Lexington) Fayette, 45
CLARK, LARRY (D - Louisville) Jefferson, 46
CLARK, PERRY B. (D - Louisville) Jefferson, 37
CLARKE, PHILIP JOSEPH "JOE" JR. (D - Danville) Boyle, Washington, 54
COLEMAN, JACK L., JR. (D - Burgin) Anderson, Franklin, Mercer, 55
COLLINS, HUBERT (D - Wittensville) Johnson, Martin, 97
COLTER, BARBARA WHITE (R - Manchester) Clay, Laurel, Leslie, 90
CRALL, BRIAN (R - Owensboro) Daviess, 13
CRENSHAW, JESSE (D - Lexington) Fayette, 77
CURD, FREED (D - Murray) Calloway, Trigg, 5
CYRUS, RONALD R. (D - Flatwoods) Greenup, 98
DAMRON, ROBERT (D - Nicholasville) Fayette, Jessamine, 39
DESKINS, HERBERT "HERBIE" JR. (D - Coal Run) Floyd, Pike, 94
DEWEESE, BOB M. (R - Louisville) Jefferson, 48
FLETCHER, ERNEST L. (R - Lexington) Campbell, Harrison, Pendleton, Robertson, 78
FORD, DANNY R. (R - Mt. Vernon) Lincoln, Pulaski, Rockcastle, 80
FOX, RICK (D - Harlan) Harlan, 88
FRIEND, KELSEY, JR. (D - Pikeville) Pike, 93
GEE, WALTER (R - Grayson) Carter, Lewis, 96
GEVEDEN, CHARLES R. (D - Wickliffe) Ballard, Carlisle, Fulton, Hickman, McCracken, 1

GOOCH, JIM, JR. (D - Providence) Daviess, Henderson, Hopkins, McLean, Webster, 12
GRAHAM, DREW (D - Winchester) Clark, Madison, 73
GRAHAM, H. "GIPPY"(D - Frankfort) Franklin, 57
GRAY, J.R. (D - Benton) Lyon, Marshall, McCracken, 6
HAMPTON, ELBERT (R - Artemus) Knox, Laurel, 86
HATCHER, E. PORTER, JR. (D - Louisville) Jefferson, 43
HELERINGER, BOB (R - Louisville) Jefferson, 33
HOGANCAMP, KATHY (R - Paducah) Caldwell, Crittenden, Livingston, McCracken, 4
HOUSE, DEAN (D - Stamping Ground) Fayette, Scott, 62
JENKINS, JONI L. (D - Shively) Jefferson, 44
JENSEN, TOM (R - London) Laurel, Pulaski, 85
JORDAN, ELEANOR (D - Louisville) Jefferson, 42
KERR, THOMAS R. (D - Taylor Mill) Kenton, 64
LEE, JIMMIE (D - Elizabethtown) Hardin, 25
LILE, BILL(R - Valley Station) Jefferson, 28
LINDSAY, GROSS (D - Henderson) Henderson, 11
LONG, MARSHALL (D - Shelbyville) Bullitt, Shelby, Spencer, 58
LOVELL, JIM (D - Paris) Bath, Bourbon, Fayette, Nicholas, 72
MAGGARD, JIM (D - Jackson) Breathitt, Jackson, Laurel, Owsley, 89
MARCOTTE, PAUL H. (R - Union) Boone, Carroll, Gallatin, Trimble, 60
MARICLE, ALLEN (R - Pioneer Village) Bullitt, 49
MARZIAN, MARY LOU (D - Louisville) Jefferson, 34
MASON, PAUL (D - Whitesburg) Letcher, Pike, 91
MELLO, ANTHONY (R - Mammoth Cave) Edmonson, Hart, Larue, 19
MOBERLY, HARRY, JR. (D - Richmond) Madison, 81
MORRIS, H. RAMSEY, JR. (D - Hopkinsville) Christian, Trigg, 8
MULLINIX, RAY (R - Burkesville) Cumberland, Green, Metcalfe, Monroe, 53
MURGATROYD, RICHARD L. (R - Villa Hills) Kenton, 63
NAPIER, LONNIE (R - Lancaster) Estill, Garrard, Madison, 36
NELSON, CHARLES "PREACHER" (D - Bremen) Christian, Hopkins, Muhlenberg, 15
NESLER, FRED (D - Mayfield), Graves, McCracken, 2
NEWSOME, DONNIE (D - Dema) Knott, Magoffin, Wolfe, 92
NOLAND, CLARENCE D., JR. (R - Irvine) Leslie, Perry, 84
NORTHUP, ANNE MEAGHER (R - Louisville) Jefferson, 32
NUNN, STEVEN R. (R - Glasgow) Barren, Warren, 23
PALUMBO, RUTH ANN (D - Lexington) Fayette, 76
RAPIER, KENNY (D - Bardstown) Bullitt, Nelson, 50
RASCHE, FRANK (D - Paducah) McCracken, 3
REINHARDT, JON DAVID (R - Alexandria) Boone, Campbell, Kenton, 69
RICHARDS, JODY (D - Bowling Green) Warren, 20
RIGGS, STEVE (D - Louisville) Jefferson, 31
RINER, TOM (D - Louisville) Jefferson, 41
SCOTT, WILLIAM U. (D - Raywick) Casey, Marion, Pulaski, 24
SILER, CHARLES L. (R - Williamsburg) Laurel, Whitley, 82
SIMPSON, ARNOLD (D - Covington) Kenton, 65
STACY, JOHN WILL (D - West Liberty) Menifee, Morgan, Rowan, 71
STINE, KATIE KRATZ (R - Ft. Thomas) Campbell, 68
STUMBO, GREGORY D. (D - Prestonsburg), Floyd, 95
THOMAS, ROGER (D - Smiths Grove) Warren, 21
TODD, TOMMY (R - Nancy) Clinton, Pulaski, Russell, 83
TREESH, MARK (R - Philpot) Daviess, Hancock, 14
TURNER, RICHARD A. (R - Tompkinsville) Allen, Simpson, Warren, 22
VINCENT, JOHN (R - Ashland) Boyd, 100
WALTON, CHARLIE (R - Florence) Boone, 66
WAYNE, JIM (D - Louisville) Jefferson, 35
WORTHINGTON, PETE (D - Ewing) Bracken, Fleming, Mason, 70
ZIMMERMAN, JAMES F. (R - LaGrange) Jefferson, Oldham, 59

The Twenty-Ninth and Seventy-Fifth Districts are vacant - See Page Two of the House Journal

APPENDIX B

HISTORY OF ACTION TABLES

1996 FIRST EXTRAORDINARY SESSION

Appendix B - History of Bills and Resolutions in House
1996 First Extraordinary Session

Numbers refer to page of House Journal. The text of a bill is given on first reading.
Sponsors are listed when bill is introduced.
*Voting modifications are listed after the roll call vote in Appendix C.

Bill No.	Intro duced	Re- ferred	Re- ported	Readings			Sub or Amend	Voting*	Senate Message	Concur Activities	Enrolled (Sent to Gov.)	Other Action
				1st	2nd	3rd						
HB 1	2	3	3	3	151	226	109, 110, 111, 151, 152, 203, 204, 205, 206, 211, 212, 214, 215, 216, 218, 219, 220, 221, 222, 223, 246	229, 304	246	246, 303, 304	305 (305)	53, 111, 152, 203, 230, 231, 245, 246, 304
HB 2	2	3	151	151	226	233		233	241		305 (305)	59, 226, 245
HB 3	59	59										
HB 4	59	59										
HB 5	59	59	61	61			151					61, 110
HB 6	59	59										

History of House Resolutions in House

Numbers refer to page of House Journal. The text of a resolution is given on first reading or adoption.

Bill No.	Intro duced	Re- ferred	Re- ported	Readings			Sub or Amend	Voting*	Senate Message	Concur Activities	Enrolled (Del. to Gov.)	Other Action
				1st	2nd	3rd						
HR 1	2							2				
HR 2	2							3				
HR 3	2							3				
HR 4	52							53				52, 53
HR 5	230							230				
HR 6	237							238				237
HR 7	237							305				
HR 8	243							245				244
HR 9	243							244				243, 244

History of Senate Resolutions in House

Concurrent Resolutions are designated SCR.

Bill No.	Senate Message	Re-ferred	Re-ported	Readings 1st	2nd	3rd	Sub or Amend	Voting*	Concur Activities	Enrolled	Other Action
SCR 13	241							304			

APPENDIX C

ROLL CALL VOTES

1996 FIRST EXTRAORDINARY SESSION

APPENDIX C - ROLL CALL VOTES
1996 First Extraordinary Session

HB 1 (Dec 6) YEAS: 80

ACKERSON
ADAMS
ADKINS
ALLEN
ALTMAN
ARNOLD,A.
ARNOLD,J.
BALLARD
BARROWS
BAUGH
BONDURANT
BOWLING
BRANDSTETTER
BROWN
BRUCE
BUIS
BURCH
BUTLER,DW
CALLAHAN
CAVE
CLARK, L
CLARKE, J
COLEMAN
COLTER
CRALL
CURD
DAMRON
DEWEESE
FLETCHER
FORD
FOX
GEE
GEVEDEN
GOOCH
GRAHAM, D.
GRAHAM, G.
HAMPTON
HATCHER
HELERINGER
HOGANCAMP
HOUSE
JENSEN
JORDON
KERR
LEE
LILE
LINDSAY
LONG
LOVELL
MAGGARD
MARCOTTE
MARICLE
MARZIAN
MELLO
MOBERLY
MULLINIX
MURGATROYD
NAPIER
NESLER
NOLAND
NORTHUP
NUNN
PALUMBO
RAPIER
RASCHE
REINHARDT
RICHARDS
RIGGS
SCOTT
SILER
SIMPSON
STACY
STINE
THOMAS
TODD
TREESH
TURNER
WALTON
WORTHINGTON
ZIMMERMAN

NAYS: 17

BUTLER, DE.
CLARK, P.
COLLINS
CRENSHAW
CYRUS
DESKINS
FRIEND
GRAY, J.R.
HORLANDER
JENKINS
MASON
NELSON
NEWSOME
RINER
STUMBO
VINCENT
WAYNE

VACANCIES: 2

HB 1 Final Passage (Dec 12) YEAS: 75

ACKERSON
ADAMS
ADKINS
ALLEN
ARNOLD, A.
ARNOLD, J.
BARROWS
BAUGH
BONDURANT
BOWLING
BRANDSTETTER
BROWN
BRUCE
BUTLER, DW.
CALLAHAN
CAVE
CLARK, L.
CLARKE, J.
COLEMAN
COLTER
CRALL
CURD
DAMRON
DEWEESE
FLETCHER
FORD
GEE
GEVEDEN
GOOCH
GRAHAM, D.
GRAHAM, G.
HAMPTON
HATCHER
HELERINGER
HOGANCAMP
JENSEN
JORDAN
KERR
LEE
LILE
LINDSAY
LONG
LOVELL
MAGGARD
MARCOTTE
MARICLE
MARZIAN
MELLO
MOBERLY
MORRIS
MULLINIX
MURGATROYD
NAPIER
NESLER
NOLAND
NORTHUP
NUNN
PALUMBO
RAPIER
RASCHE
REINHARDT
RICHARDS
RIGGS
SCOTT
SILER
SIMPSON
STACY
STINE
THOMAS
TODD
TREESH
TURNER
WALTON
WORTHINGTON
ZIMMERMAN

NAYS: 18

BALLARD
BUTLER, DE.
CLARK, P.
COLLINS
CRENSHAW
CYRUS
DESKINS
FRIEND
GRAY, J.R.
HOLANDER
JENKINS
MASON
NELSON
NEWSOME
RINER
STUMBO
VINCENT
WAYNE

VACANCIES: 2

Voting Modifications: Page 231 - Collins, Nay on Floor Amendment No. 41 to Committee Substitute No. 2 to House Bill 1;
Drew Graham, Yea on Floor Amendment No. 14 to Committee Substitute No. 2 to House Bill 1; and
Wayne, Yea on Floor Amendment No. 19 to Committee Substitute No. 2 to House Bill 1.
Page 245 - Palumbo, Nay on Floor Amendment No. 36 to Committee Substitute No. 2 to House Bill 1.

HB 2 (Dec 9) YEAS: 80

ADAMS
ADKINS
ALLEN
ALTMAN
ARNOLD, A.
ARNOLD, J.
BALLARD
BARROWS
BAUGH
BONDURANT
BOWLING
BRANDSTETTER
BROWN
BRUCE
BURCH
BUTLER, DE.
BUTLER, DW.
CALLAHAN
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